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100.0000 AIRCRAFT

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Situs

100.0005 Assessment. Aircraft owned by a commercial air carrier, taken out of scheduled service and grounded in the county prior to the lien date, and not flown during the representative period are assessable as general aircraft in the county on the lien date, provided they had an established tax situs in California and were solely situated in or habitually situated in the county on the lien date. C 6/21/99. (2000–1).

100.0010 Dealer’s Inventory. Basically, the guidelines for exemption of aircraft are the same as for other properties, e.g., they must be held for either sale or lease as of the lien date.

Where a dealer is using an aircraft for pilot training or charter, Property Tax Rule 133 subdivision (b)(3) would exclude that aircraft from exemption. Additionally, rule 133 subdivision (b)(5) and (6) would exclude from the exemption any aircraft held for lease that were used or were intended to be used for pilot training or charter. LTA 9/30/80 (No. 80/144).

100.0015 Exemption. Revenue and Taxation Code section 5303(b) does not provide a property tax exemption to those specified items of personal property excluded from the definition of “aircraft.” Any airplane excluded from the definition of “aircraft” under section 5303(b)(2) necessarily falls within the definition of “certificated aircraft” under Revenue and Taxation Code section 1150. C 3/31/99. (2000–1).

100.0016 Fractional Ownership Interests. An aircraft in which ownership has been divided into smaller fractional ownership interests, similar to a timeshare estate in real property without fixed dates of possession, may be taxable in California as a general aviation aircraft. Such fractionally owned aircraft may acquire taxable situs in California if the aircraft maintains a substantial presence in the state. If two or more states acquire the power to tax the aircraft owing to the aircraft’s having acquired tax situs in their states, each state is to apportion its tax to the extent that the aircraft could also be taxed by another state. An apportioned value should be based upon the actual time the aircraft was in California.

AIRCRAFT (Contd.)

If such an aircraft acquires taxable situs in California, the proper assessee of an aircraft that is operationally controlled by one entity and fractionally owned by multiple persons is either the entity or the fractional owners pursuant to Revenue and Taxation Code section 405. C 8/9/2006. (2007-1).

Note: These provisions have been superseded by Revenue and Taxation Code sections 1160-1162, added by Stats. 2007, Ch. 180, section 4, effective August 24, 2007.

100.0020 Rate of Tax. It is the opinion of the State Board of Equalization and the State Controller that the 1979 tax rate on general aircraft should not exceed the tax rate on other property on the unsecured roll, Revenue and Taxation Code section 5391 notwithstanding.

To derive a rate, the previous year's secured tax rate should be divided by four to account for the 100 percent assessment ratio on general aircraft. LTA 7/3/79 (No. 79/113).

100.0025 Repair Exemption. Revenue and Taxation Code section 220 provides an exemption for out-of-state aircraft that are brought into California "solely for the purpose of being repaired, overhauled, modified, or serviced." The Legislature's purpose was to encourage aircraft repair and maintenance facilities to locate in California and be in a competitive position to service out-of-state clients. The exemption includes a list of technical services sufficiently broad to cover a wide array of circumstances and without any time limitation and without disqualification if additional activities, such as storage, are also involved. The fact that the Legislature omitted such limitations indicates that a broader interpretation of the exemption is required. C 9/13/2001. (2003-1).

100.0026 Repair Exemption. The dismantling of an aircraft is not a modification within the meaning of Property Tax Rule 138. The other qualifying activities, repair, service and overhaul, have the purpose of keeping an aircraft in operation or returning an aircraft to operation. However, the act of dismantling has the effect of taking an aircraft out of operation. Thus, an aircraft in the state for the purpose of being dismantled is not being modified within the meaning of Rule 138 and would not qualify for the exemption. However, such an aircraft may qualify for the business inventory exemption if held for sale or lease in the ordinary course of business. C 6/29/2004. (2005-1).

100.0030 Situs. If an aircraft is present in the county on the lien date and had situs in the county for one or more of the preceding assessment years, then it will have current taxable situs in the county even if removed prior to the start of the new fiscal year. C 11/5/97. (M99-1).

100.0050 Valuation. Cost for assessment purposes is full economic cost, which includes all market costs, both direct and indirect, and which includes sales tax or use tax. Thus, for property tax purposes, if sales/use tax is applicable to similar consumers using aircraft at a similar trade level, sales/use tax is to be included in the assessment, even when it was not paid at the time of sale/purchase because the Board of Equalization through its Sales and Use Tax Department found the transaction exempt from sales tax or use tax pursuant to the provisions of the Sales and Use Tax Law. C 9/26/2001. (2003-1).

105.0000 AIRCRAFT OF HISTORICAL SIGNIFICANCE EXEMPTION

See Aircraft

105.0020 Aircraft of Historical Significance, Defined. The term “aircraft of historical significance” means any aircraft which is an original, restored, or replica of a heavier-than-air powered aircraft which is 35 years or older or any aircraft of a type or model of which there are fewer than 5 in number known to exist worldwide. LTA 9/4/87 (No. 87/67).

105.0030 Available for Display to the Public. The term “available for display to the public” means actual display or documented willingness to display at either (a) an organized airshow, (b) a museum, or (c) a special designated area set aside for historical aircraft open to the public.

To qualify as available for display to the public under any situation, other than (a), (b), or (c) above, an individual must document that an aircraft is displayed in such a manner that the general public is aware that public viewing is clearly invited, and there are reasonable accommodations to allow public viewing of the aircraft.

To qualify as available for display under any situation also means that the general public must be made aware of, and there must be reasonable viewing hours. LTA 12/20/2002 (No. 2002/090). (Am. 2004–1).

105.0034 Claim Filing. A claim for the historical aircraft exemption was filed timely, but in the wrong county because the aircraft was moved during the year. The taxpayer complied in good faith with each requirement necessary to qualify for the historical aircraft exemption, i.e., by filing an affidavit upon receipt of the form and promptly responding to further inquiries by the assessor that sent the form. Revenue and Taxation Code section 166 applies broadly to allow proof of timely filing of any statement, affidavit, application, or any other paper or document with a taxing agency by a specified time on a specified date through U.S. Mail. Accordingly, the claim should be accepted as filed timely, and the historical aircraft exemption claim should be granted. C 11/12/2002. (2004–1).

105.0035 Commercial Purpose. The term “commercial purpose” includes the conveyance of passengers or goods for any business reason or use of an aircraft for any revenue-producing activity. Also, either depreciation of an aircraft as business property or deduction of expenses of an aircraft as business expenses or both are indicia that an aircraft is used for commercial purposes. LTA 12/20/2002 (No. 2002/090). (Am. 2004–1).

105.0040 General Transportation. To constitute general transportation, there must be flight from one place to another. The term “general transportation” includes noncommercial flight of the aircraft from one place to another, unless flight of the aircraft is for the sole purpose of transferring the aircraft from one location to another rather than the occupant. It does not, however, include maintenance-related flying or recreational flying if the flight originates and terminates at the same place with no intervening stop, or only a limited interim stop, at another place. LTA 12/20/2002 (No. 2002/090). (Am. 2004–1).

AIRCRAFT, ETC. (Contd.)

105.0050 **Late Filing.** Until January 1, 2004, there was no provision for late filing for the aircraft of historical significance exemption. Chapter 604, Stats. 2003, added section 276.5 to the Revenue and Taxation Code to provide for late filing, effective as of January 1, 2004. Thus, late filing is available for 2004 claims and thereafter, but not to late filings for prior years. C 5/5/2004. (2005-1).

105.0051 **Late Filing.** Pursuant to Revenue and Taxation Code sections 255 and 254, the affidavit for claiming the exemption must be filed annually with the assessor between the lien date and February 15. The only provision for late filing is in section 276.5, which provides that a person filing an affidavit after February 15 but on or before August 1 of the assessment year is eligible for 80 percent of the full reduction. This provision is effective only for 2004 and later years. If an affidavit was not timely filed for years prior to 2004, the exemption is deemed waived under section 6 of article XIII of the California Constitution. C 3/15/2006. (2007-1).

105.0065 **Ownership.** To qualify for the exemption, an aircraft must be owned by an individual rather than by a corporation or other legal entity. C 3/6/90.

105.0066 **Ownership.** An aircraft of historical significance which is owned by a grantor revocable trust is owned by the individual grantor/beneficial owner of the trust, who is "an individual owner" for purposes of Revenue and Taxation Code section 220.5. Thus, the aircraft is eligible for the exemption. C 6/4/99. (2001-1).

110.0000 ALLOCATION OF PROPERTY TAX REVENUES

110.0005 **Allocation.** The Madera County Auditor may not allocate a portion of property tax revenues to an irrigation district that levied only an ad valorem assessment prior to the 1978-1979 fiscal year. OAG 5/24/2001 (No. 00-1104, Vol. 84, p.81). (2003-1).

110.0010 **Calculation.** In calculating the allocation of property tax revenues when a city incorporates but does not assume all service responsibilities for its territory, the calculations are not to include (1) funds carried over to the prior fiscal year from a previous year or (2) funds derived from charges for licenses, permits, and such services as law enforcement services furnished under contract to other governmental agencies where the charges are levied specifically to offset the cost of the particular services and do not exceed the cost reasonably borne in providing the services. OAG 9/15/88 (No. 88-603, Vol. 71, p. 286).

110.0030 **Reduction.** The termination of an existing city tax in 1990 as a result of a "sunset clause" enacted in 1985 will require a reduction in the amount of property taxes allocated to a city under the terms of Revenue and Taxation Code Section 97.35(f)(2). OAG 8/15/89 (No. 89-506, Vol. 72, p. 138).

ANIMALS

See Business Inventory Exemption

115.0000 ANNEXATION

115.0002 Annexation By City. In a city annexation proceeding, the city and the county are not required to reach an agreement for the transfer of property tax revenues; a property tax transfer agreement is void if reached by the city and the county after expiration of the 30-day negotiation period; and a certificate of filing is void that is issued with respect to a petition presented more than 60 days after the last signature was affixed. OAG 12/7/88 (No. 88-501, Vol. 71, p. 344).

115.0005 Date of Annexation. An annexation is considered complete (i.e., valid and binding with respect to its boundaries and its taxing authority as to public agencies and person affected), from the date of execution of a certificate of completion. However, an annexation is considered effective (i.e., providing formal notification to all persons in the county about the annexation) from either (1) the date fixed in the terms and conditions of the local agency commission resolution or (2) the date of recording the certificate of completion with the county recorder, if no effective date has been fixed in the terms and conditions of the resolution. Pursuant to Government Code sections 54903 and 57204, an annexation is actually implemented for purposes of property taxation only when a statement of boundary change has been filed with the State Board of Equalization, the county assessor, and the county auditor. C 12/13/2000. (2002-1).

115.0010 Tax Rate. The Property Tax Relief Act of 1972, as amended, authorizes a local agency, after annexing territory where an election is not required to effectuate the annexation, to levy a tax rate in the annexed territory equal to that within the remainder of the local agency without a tax rate election. OAG 1/30/74 (No. CV 73-253, Vol. 57, p. 76).

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PROPERTY TAX ANNOTATIONS

120.0000 APPRAISER

- 120.0010 **State Certified.** California state certified appraisers should not be considered professional employees under Government Code Section 3507.3. OAG 3/14/74 (No. CV 73-247, Vol. 57, p. 127).

125.0000 APPRAISER CERTIFICATION

- 125.0005 **Contract Appraisers.** Employees who perform appraisal duties in the assessor's office on a contract basis, whether considered "consultants" or "independent contractors" from the standpoint of labor law or personnel regulations, must obtain temporary or permanent certification from the State Board of Equalization. If persons without certification are hired to perform data collection and the assembling of appraisal units of comparison, it must be demonstrable that this is all they do, and an appropriate county or city and county official must be prepared to verify that such employees are not performing the duties or exercising the authority of an appraiser in violation of Revenue and Taxation Code sections 670, et seq. LTA 5/29/96 (No. 96/34).
- 125.0008 **County Assessors.** There is an annual training requirement for county assessors which must be met in order to retain a valid appraiser's certificate. This requirement applies to county assessors taking office after January 1, 1997. It also applies to county assessors, if any, who were in office on January 1, 1997, and who hold valid appraiser's certificates and wish to maintain the validity of their certificates. C 12/1/97. (M99-1).
- 125.0010 **Financial Interest Statement.** The failure to file a Financial Interest Statement as required by Revenue and Taxation Code Section 672 is not grounds for revocation of an appraiser certificate.
- Such failure should be treated by the assessor under the same procedures he utilizes in instances where he finds a conflict of interest (Revenue and Taxation Code Section 1365) exists. C 5/25/79.
- 125.0020 **Outside Expert.** While an assessor may arrange for an outside expert to value specialized properties when permanent staff do not possess the expertise to do so, such expert should have an appraiser's certificate in order to be able to do so. C 8/30/77; C 7/18/83. (Am. M99-1).
- 125.0030 **Training.** The following sources of training have proved to be acceptable over the years:
1. Formal appraisal courses presented by nationally recognized appraisal societies and associations (such as the AIREA, IAAO, SREA, SGA, etc.). We have included a list of approved courses and a standard number of hours of credit for each.
 2. Certain seminars or workshops presented by the same appraisal societies.
 3. Appraisal and real estate related courses offered by University of California extension (real estate certificate program), state colleges and universities, and community colleges (real estate certificate program).
 4. Locally conducted assessor's training programs. These include State Board of Equalization courses that have been approved for local

APPRAISER CERTIFICATION (Contd.)

presentations and courses designed to meet the needs of a specific assessor's staff.

The State Board of Equalization's Assessment Standards Division is responsible for approving courses and assigning the numbers of hours of credits therefor. LTA 4/3/79 (No. 79/69).

APPRAISER FINANCIAL INTEREST STATEMENT

See Appraiser Certification

130.0000 ARTICLE XIII A—PROPERTY TAX LIMITATION

- 130.0010 **Ad Valorem Tax on Real Property.** Both a resource conservation district regular and special assessment under Division 9 of the Public Resources Code constitute an “ad valorem tax on real property” within the purview of sections 1 and 4 of article XIII A of the California Constitution. OAG 2/6/81 (No. 80-1003, Vol. 64, p. 105).
- 130.0020 **Apportionments and One Percent Limitation Requirement.** Property taxes levied pursuant to Education Code Section 16090 to repay apportionments made under Sections 16310 through 16344 of the Code are exempt from the one percent property tax limitation contained in section 1 of article XIII A of the California Constitution. OAG 6/29/79 (No. CV 78-136, Vol. 62, p. 339).
- 130.0030 **Assessments by Local Flood Control District.** The Board of Supervisors of the Ventura County Flood Control District may levy and collect an ad valorem assessment on the taxable property (but only land and improvements) of the district or any zone thereof. OAG 1/10/84 (No. 83-1001, Vol. 67, p. 17).
- 130.0040 **Assessments by Local Water Districts.** Neither article XIII A of the California Constitution nor Revenue and Taxation Code Section 93 affects the authority of a California water district to levy assessments to pay the principal and interest on bonds issued to finance the construction of water and sewer system projects, where the bonds were approved by two-thirds of the voters at an election held after July 1, 1978. OAG 12/2/82 (No. 82-803, Vol. 65, p. 603).
- 130.0050 **California Water District Assessments.** Article XIII A of the California Constitution and Revenue and Taxation Code Section 93 do not affect the authority of a California Water District to levy assessments. OAG 10/26/81 (No. 81-901, Vol. 64, p. 790).
- 130.0060 **Fire Protection District and One Percent Limitation Requirement.** A fire protection district may not exceed the one percent limitation contained in section 1 of article XIII A of the California Constitution for the purpose of obtaining revenue to pay an indebtedness prior to July 1, 1978, whether or not such action is necessary to avoid default of the obligation of the district's contract. OAG 10/16/79 (No. 79-424, Vol. 62, p. 589).
- 130.0070 **New School Construction Funding.** Under the provisions of article XIII A of the California Constitution, school districts may continue to fund new

ARTICLE XIII A, ETC. (Contd.)

school construction through the use of voter approved bonds and lease-purchase agreements if the indebtedness was approved by the voters prior to July 1, 1978. OAG 4/18/79 (No. CV 78-119, Vol. 62, p. 209).

- 130.0071 New School Construction Funding.** The provisions of article XIII A of the California Constitution and the legislation which implements it do permit a school district to conduct a bond election and acquire funds for the purpose of property acquisition and school construction.

The measure or measures submitted to the voters need only be approved by two-thirds of the voters who actually vote at an election called for such purpose. The “special tax” to fund the bonds may not, however, be an ad valorem property tax or a tax on the transfer of real property. OAG 10/4/83 (No. 82-1202, Vol. 66, p. 321).

- 130.0080 Property Taxes of Local Water Districts.** Property taxes levied by local water districts necessary to provide for payments to the state under the state water supply contracts fall within section 1(b) of article XIII A of the California Constitution. OAG 8/18/78 (No. CV 78-90, Vol. 61, p. 373).

- 130.0090 Special Taxes.** The fees imposed under Government Code Section 65974 constitute “special taxes” within the meaning of article XIII A of the California Constitution. OAG 5/18/79 (No. CV 78-123, Vol. 62, p. 254).

- 130.0091 Special Taxes.** The “special taxes” provision of section 4 of article XIII A of the California Constitution is applicable to the adoption of a retail transactions and use tax ordinance by the Los Angeles County Transportation Commission. OAG 2/10/81 (No. 80-1107, Vol. 64, p. 156).

- 130.0100 Validity of Limitations.** The exclusion under Revenue and Taxation Code Sections 60 through 66 of transfers of certain property interests from the meaning of “change in ownership” is a valid construction of article XIII A of the California Constitution.

The limitations under Revenue and Taxation Code Sections 70 through 72 of the term “newly constructed,” interpreted in the light of constitutional constraints to exclude only such reconstruction after a disaster “as declared by the Governor,” is a valid construction of article XIII A of the California Constitution.

The limitation under Section 43 of Chapter 242 of the Statutes of 1979 of the authority of a county assessor to enroll escape assessments for years prior to 1979–80 to reflect the “full cash value” of any property is constitutional. OAG 4/18/80 (No. 79-1005, Vol. 63, p. 304).

- 130.0105 Veterans’ Facilities.** Article XIII A of the California Constitution, as implemented by Revenue and Taxation Code Section 2237, generally prohibits a county board of supervisors from levying a tax under the provisions of Military and Veterans Code Section 1262. OAG 10/31/79 (No. 79-809, Vol. 62, p. 655).

140.0000 ARTICLE XIII B—GOVERNMENT SPENDING LIMITATION

140.0005 Change in the Cost of Living. For purposes of article XIII B, section 8(e)(2) of the California Constitution which defines “change in the cost of living” to include in the alternative “the percentage change in the local assessment roll from the preceding year . . . due to the addition of local nonresidential new construction”, the phrase “new construction” includes negative new construction resulting from demolition. C 6/10/96.

140.0010 Emergency Funding Limits. Under section 3(c) of article XIII B of the California Constitution, when an emergency (an extraordinary occurrence or combination of circumstances that was unforeseen and unexpected at the time a governmental entity adopted its budget for the fiscal year in which it occurs and which requires immediate and sudden action of a drastic but temporary nature) occurs, the appropriation limit for a governmental entity in that fiscal year may be exceeded for that year only by the amount needed to pay for the emergency, but the limits that would otherwise have been placed on its appropriations for the subsequent three years must be reduced to recoup the entire additional spending occasioned by the emergency. OAG 3/2/82 (No. 81-410, Vol. 65, p. 151).

140.0020 Subventions. Where the Legislature increases the number of municipal court judges, the state is not required under Section 6 of article XIII B of the California Constitution to reimburse the costs incurred by local agencies for such judges. OAG 8/28/80 (No. 80-509, Vol. 63, p. 700).

140.0021 Subventions. Section 6 of article XIII B of the California Constitution contemplates that the state should provide a subvention of funds to reimburse counties for the costs of the judicial arbitration in municipal courts. Reimbursement, however, is still subject to appropriation of funds by the Legislature. OAG 4/9/81 (No. 80-1011, Vol. 64, p. 261).

150.0000 ASSESSED VALUE

*See Full Cash Value
Value*

150.0010 Definition. Section 3.5 of article XIII of the California Constitution, which pertains to the veterans’ and disabled veterans’ exemptions, redefines “assessed value” to mean “full value” instead of 25 percent of full value. Implementing legislation, Statutes of 1978, Chapters 1207, 1273, and 1276, is operative January 1, 1981. LTA 3/25/80 (No. 80/55).

150.0011 Definition. The provision in Revenue and Taxation Code Section 135 changing the definition of “assessed value,” beginning with the 1981–82 fiscal year, does not have a substantive effect upon other statutes that contain the term without specific definition and which have not been amended to reflect the new property tax system revision. OAG 2/10/82 (No. 81-1101, Vol. 65, p. 136).

160.0000 ASSESSEE

*See Assessment Appeals Board
Escape Assessments
Property Statement
State-Assessed Property*

- 160.0002 **Assessor's Records.** After a property is sold, the former owner is no longer considered an "assessee" of that property and does not have access to the assessor's records pertaining to the property, when owned by the new owner, that are statutorily held to be confidential. "Assessee" is defined in Revenue and Taxation Code section 23 as "the person to whom the property or a tax is assessed" and is understood to mean the current owner. C 3/6/98. (M99-2).
- 160.0004 **Computer Program Storage Media.** Revenue and Taxation Code Section 995 provides that storage media for computer programs are assessable for property tax purposes and should be valued as if there were no computer programs on them, except basic operational programs. Computer programs, even basic operational programs, existing separately from the storage media cannot be assessed. Therefore, pursuant to Revenue and Taxation Code Section 405(a), the assessor can make assessments only to the persons owning, claiming, possessing or controlling storage media on the lien date. If the storage media is leased, the assessor has the option of making the assessment to the owner (lessor), to the lessee, or to both the lessor and lessee of the storage media as provided by Revenue and Taxation Code Section 405(b). LTA 4/30/96 (No. 96/29).
- 160.0005 **Cross-Securing of Personal Property.** An assessor may not cross-secure personal property owned by a corporation to real property owned by the sole shareholder of the corporation unless the shareholder is also the assessee of the personal property. C 4/25/79.
- 160.0010 **Estate Property.** Property in an estate should be enrolled, whether the assessment is a regular one or an escape, in the name of the estate or in the name of the beneficiary who will receive the particular property. If the property has been distributed, the assessment, regular or escape, should be in the name of the beneficiary only since the executor's/administrator's liability to pay taxes ceases once the estate is distributed. This approach is proper whether the beneficiary is the recipient of a partial interest in or obtains sole ownership of the property. C 12/19/89.
- 160.0013 **Name on Assessment Roll.** Person desiring his name to appear on assessment roll with respect to parcel of land has right to have property so assessed to him if he has claimed it in property statement filed pursuant to Revenue and Taxation Code section 441, without showing further proof of interest in land to the assessor. C 3/14/89; OAG 5/29/59 (No. 59-70, Vol. 33, p. 118).
- 160.0015 **Personal Property Leased to a Bank or Insurance Company.** Personal property leased to banks and insurance companies is not entitled to the exemption accorded the personal property owned by such institutions, and such property should be assessed to the lessor. Personal property leased to a bank or insurance company is exempt if the bank or insurance company is the equity

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owner, however, even though the agreement between the lessor and the bank or insurance company is denominated a lease. C 7/24/79.

160.0020 Personal Property Leased by a Bank or Financial Corporation.

Pursuant to Revenue and Taxation Code Section 235, a lessee of personal property owned by a bank or financial corporation is conclusively presumed to be the owner of the property. Thus, in light of Revenue and Taxation Code Section 441, which requires every person owning personal property to file a property statement, such a lessee must file a property statement if the property has an aggregate cost of \$30,000 or more. Revenue and Taxation Code Sections 441(d) and 442 and *Roberts v. Gulf Oil Corp.*, 147 Cal.App.3d 770, however, require the bank or financial corporation to continue to report the leased property on its property statement. C 4/14/87.

Note: Stats. 1995, Ch. 498 changed \$30,000 threshold to \$100,000.

160.0025 Personal Property Leased by a Bank or Financial Corporation.

Leased personal property that is accurately reported pursuant to Revenue and Taxation Code Section 441(f) by a financial corporation should be subject to a single assessment because Revenue and Taxation Code Section 235 requires the conclusive presumption of ownership by the lessee. C 6/13/96.

170.0000 ASSESSMENT

See Assessment Appeals Board

Change in Ownership

Corrections

County Board of Equalization

Valuation Methodology

Value

170.0005 Allocation of Value. An assessor may reallocate land and improvement values for a single-family residence when a property is substantially renovated within two years of its original purchase. Revenue and Taxation Code section 51.5 allows an assessor to correct any base year value error or omission within four years after enrolling an assessment if that error was the result of the exercise of value judgment. C 8/2/2005. (2006–2).

170.0006 Application of Inflation Factor. For a property purchased on March 23, 1990, pursuant to Revenue and Taxation Code Section 75.18, the 2% inflation factor would be added to the new base year value the following March 1, 1991, since the change in ownership entered on the supplemental roll took place between March 1 and June 30. C 9/13/94.

170.0007 Application of Inflation Factor. The requirement in Revenue and Taxation Code section 51(a)(1)(B) to round the annual inflation factor to the nearest one-thousandth of one percent is applicable as of the effective date of the legislation, January 1, 1997; it should not be applied retroactively. Thus, that inflation factor should be applied to timely assessments and escape assessments for the 1997–98 assessment year.

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For the 1995-96 and 1996-97 assessments years, when the inflation factor was less than two percent, the Board advised assessors that the inflation factor should be rounded to the nearest one hundredth of one percent. Accordingly, the Board's policy of rounding the inflation factor to the nearest one hundredth of one percent would apply for both timely assessments and escape assessments for the 1995-96 and/or 1996-97 assessment years. C 3/18/99. (2000-1).

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170.0011 Base Year Values. Revenue and Taxation Code section 110.1 subdivision (a) sets June 30, 1980¹ as the deadline for establishing 1975 base year values for those properties eligible for such values that were not actually appraised for 1975 as part of the normal appraisal cycle. After that date, 1975 base year values may not be changed unless a portion of the property is removed. Subsequent declines in value must be reflected on the assessment roll; however, this does not create a new base year value.

There is no such statutory limitation regarding base year values for years other than 1975. Based upon section 1 of article XIII of the California Constitution, the assessor can establish post-1975 base year values as follows:

Example #1

In January of 1983 it is discovered that a barn constructed in July of 1976 has never been assessed. The rest of the property, land and improvements, has a base year of 1975. However, since the barn was newly constructed in July of 1976, it should have been appraised as of the date construction was completed and assessed for the 1978-79 assessment year. In this situation, the barn should be valued as of July 1976 and that value factored forward (by the inflation factor not to exceed two percent per year) for the 1983-84 assessment roll, and escapes should be levied for the four preceding years using the appropriately factored value for each of those years.

Example #2

A property was underassessed in 1980 because of an unrecorded change in ownership. In February 1990 the change in ownership is discovered. The property should be reappraised at a 1980 base year value, and that value should be factored to 1990. The factored value would be enrolled for the 1990-91 assessment roll. In this case, escape assessments should be levied for the preceding eight years using the appropriately factored value for each of the those years.

The assessor should change a post-1975 base year value whenever he determined that his original estimate of market value is erroneous, but he must be careful to use only data that is appropriate for base year valuation. Any change in base year value would initiate a new assessment appeals period as authorized under Revenue and Taxation Code section 80 subdivision (a)(3). LTA 7/22/80 (No. 80/113); LTA 10/29/82 (No. 82/124).

170.0012 Base Year Values. Increases in post-1975 base year values may be made by means of escape assessments whenever the assessor discovers an underassessment, whether due to a clerical error, an error in judgment, or otherwise, except for those values set by the local equalization board as specified in Revenue and Taxation Code Section 80(a)(3). Escape assessments may be levied for no more than four years, except in the cases of fraud or collusion (six years) or unrecorded changes in ownership (eight years). LTA 2/8/83 (No. 83/14).

¹ The Los Angeles County Assessor has until 6/30/81 to determine such values.

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170.0013 Base Year Values. When allocating a factored base year value due to a rearrangement of parcels but without a change in ownership or new construction, the allocation need only be reasonable in relation to the relative value of each new parcel and should be based on appraisal judgment. Article XIII A of the California Constitution requires only that there be no change to the overall factored base year value. C 6/8/95.

170.0015 Base Year Values. An assessor's intentional assessment of only a portion of a property on the false assumption that the omitted portion is state-assessed does not constitute a clerical error. Upon discovery of the omission, the assessor must determine a base year value pursuant to Revenue and Taxation Code section 51.5(a). The omission does not involve the exercise of the assessor's judgment as to value. Rather, the base year value was omitted due to a mistake of fact as to assessability.

The error may be corrected pursuant to the provisions of Revenue and Taxation Code section 532 with the making of appropriate escape assessments for each year open under the statute of limitations. Since the escape assessments were or will be made outside the regular assessment period, the assessee will be able to file applications for equalization within 60 days after notification of the assessments as provided by Revenue and Taxation Code section 1605. C 5/26/89.

170.0016 Base Year Values. Once a base year value is adjusted downward to reflect the current market value of a property, that property must thereafter be annually appraised and assessed at its full cash value until that value exceeds the factored base year value. LTA 8/21/96 (No. 96/52).

170.0017 Base Year Values—Changes. Base year values are generally control figures which may be adjusted to reflect inflation or to correct an error or omission. A change in a base year value does not necessarily result in a change in a current assessed value, e.g., a newly discovered change in ownership that occurred in a prior year followed by a period of deflation where the assessment based upon the decline in value is lower than the new base year value. Revenue and Taxation Code section 51.5 is the authority for base year value corrections and contains its own time limits.

Escape assessments may or may not result from a base year value correction. Such escape assessments are subject to the time limits found in Revenue and Taxation Code sections 531.2 and 532, not those contained in section 51.5. C 5/13/88.

170.0018 Base Year Values—Combination. When a parcel with a base year value and enrolled lower current market value is combined with parcels enrolled at their factored base year value, the base year value for the combined parcels should be a total base year value that reflects the base year value of each parcel. The lower current market value of the one parcel before combination should not be used to determine the combined parcel's base year value. C 9/9/96.

170.0019 Base Year Values—Correction. Where an assessor recognizes an error and reduces a base year value pursuant to Revenue and Taxation Code

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section 51.5, the taxpayer is entitled to the cancellation or refund of taxes for prior years to the extent they are open under the applicable statutes of limitation. Where, however, a taxpayer utilizes the assessment appeals process available under Revenue and Taxation Code section 80 et seq., a reduction in value applies to the year for which the appeal is filed and to future assessment years only. Section 51.5 does not provide an alternate authority for filing an assessment appeal or for the reduction of values via the assessment appeals process. C 12/26/91.

170.0025 Correction. A taxpayer is not required to file an application for reduction in assessment to obtain a reduced assessment due to a decline in value of his or her property if the assessor determines that a reduction in value is warranted. The 1995 amendment to Revenue and Taxation Code section 4831, which added subdivision (b), allows the assessor, for up to one year after making an assessment, to correct the assessment if the error or omission involved the exercise of a value judgment that arose solely from a failure to reflect a decline in value. C 6/21/96. (M99-2).

170.0030 Date of Value on Regular Roll. Pursuant to Revenue and Taxation Code section 401.3, the proper valuation date for the annual Revenue and Taxation Code section 601 assessment roll is the lien date. For properties damaged by a flood occurring on January 2, the proper methodology would be to enroll their full values as of the lien date and to then enroll their reduced values reflecting the flood damage on the supplemental roll pursuant to Revenue and Taxation Code sections 75.11 and 170. C 8/24/99. (2001-1).

170.0035 Easements. An irrevocable right to the limited use or enjoyment of a lake is an easement which is appurtenant (attached to particular land) or in gross (not attached to any particular land) but is, in either case, an interest in real property subject to assessment. C 5/17/83.

170.0038 Enrollment. For statute of limitation purposes, an assessment is made on the regular roll (Revenue and Taxation Code section 601), on the supplemental roll (Revenue and Taxation Code section 75.7), or as an escape assessment when the required information is delivered by the assessor to the county auditor. When the assessment is an escape, it is made as indicated only if the required assessment notice is sent (Revenue and Taxation Code section 534); otherwise, the escape assessment is made when the assessee receives the tax bill. C 2/24/94; C 2/3/98. (M99-1).

170.0039 Fixtures. An item of personalty may be characterized as a fixture or as personal property depending on how that item is attached to the real property and the intent of the owner. If the appraiser classifies the item as a fixture, it becomes real property. As real property, assessors are required to establish a base year value upon a change in ownership or new construction. However, the assessment treatment of fixtures differs in three areas: (1) fixtures may be a separate appraisal unit when measuring declines in value; (2) fixtures are treated differently than other real property for supplemental roll purposes; and (3) fixtures and personal

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property values are components in the value criterion for determination of a mandatory audit. Other than these three areas, fixtures are subject to the same constitutional, statutory, and regulatory provisions affecting the valuation and assessment of other real property. C 11/23/2005.

170.0040 **Floating Homes.** Floating homes are real property for assessment purposes, and the 1979 full cash value of a floating home shall be used as the base year value. LTA 3/17/82 (No. 82/43).

170.0045 **Fractional Interests.** Article XIII A, section 2, subdivision (a) requires a reassessment of real property upon its change in ownership. When a change in ownership occurs with respect to a fractional interest in real property, that fractional interest must be reassessed and any increase in value is added to the base year value of the subject real property.

Article XIII A, section 2, subdivision (b) authorizes a reduction in the full cash value base to reflect a decline in value. This subdivision has been implemented by the Legislature in Revenue and Taxation Code section 51, which does not authorize the separate assessment of fractional interests in real property for purposes of reflecting a decline in value, unless such a fractional interest constitutes an appraisal unit that persons in the market place commonly buy and sell as a unit, or that are normally valued separately. C 6/9/98. (2000-1).

170.0050 **Improvements Owned by Other Than Landowner.** If a request for separate assessment of separately owned improvements is made under Revenue and Taxation Code Section 2188.2, the assessor may, at his elective discretion, assess the improvements on the secured roll to the owner of the improvements if the assessment can be secured by a lien against other land in his county owned by the owner of the improvements so assessed, or he may assess the improvements on the unsecured roll to the owner of the improvements. C 7/12/84.

170.0051 **Improvements Owned by Other Than Landowner.** If a tenant owns improvements located in a structure on land both owned by the landlord either the landlord or tenant may file a statement of separate ownership and thereby force the assessor to separately assess the property owned by each. Revenue and Taxation Code Section 2188.2 is mandatory. C 12/6/89.

170.0052 **Improvements Owned by Other Than Landowner.** Revenue and Taxation Code Section 2188.2 applies when *some* of the improvement are owned by a person other than the owner of the land on which they are located as well as when *all* of the improvements are so owned. C 4/7/94.

170.0056 **Investment Tax Credits.** Whereas discounts, rebates, and manufacturers' credits reduce the cost of properties and may, therefore, have an impact on value, investment tax credits do not. Investment tax credits are income tax benefits afforded buyers by the government as a way of stimulating the economy. They do not, as between sellers and buyers, have anything to do with sales price. The investment tax credit impacts the buyer's capital outlay but not the exchange value of the property. C 4/30/87.

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- 170.0057 **Judgment.** The correction, cancellation, and refund sections of the Revenue and Taxation Code, when read together, lead to the conclusion that “erroneously or illegally” does not include errors in valuation judgment. The appropriate and necessary administrative remedy for disputes involving valuation judgments is an assessment appeal before a board of equalization or assessment appeals board. The appellate court cases fully support this interpretation of the term and set forth the definitive circumstances under which an assessment is considered to have been made “erroneously or illegally.” C 10/22/97. (M99-1).
- 170.0059 **Leased Personal Property.** When a person, as defined in Revenue and Taxation Code section 19, has a headquarters or primary place of conducting business within a county but has personal property out on lease at various locations throughout the county, all of that leased property may, at the assessor’s discretion, be assessed in one combined assessment and to the tax-rate area where

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the person's primary place of business is located. When a person has more than one facility in a county, the one at which personal property of the greatest value is located should be used as the situs of all of that person's leased personal property in the county.

In the absence of a regular place of business within the county, the location having leased equipment of the greatest value should be considered the owner's primary place of business within the county and should be used as the situs for all of the leased equipment in the county. If nearly all of the leased equipment is located at a location other than the owner's primary place of business, then that location should be considered the situs for all leased equipment in the county. LTA 6/13/96 (No. 96/37). (Am. M99-1).

170.0065 Mutual Water Company. Shares in mutual water companies are, in some instances, owned by persons or entities that do not necessarily receive water from the companies. In other instances the companies are owned by the recipients of the water, and the shares representing their interests are appurtenant to the lands served, i.e. they are inseparable and transfer only with a transfer of the land. When the shares are appurtenant to the lands served, they should not be separately assessed since their values would be reflected in the prices paid for the lands and would be already included in the values assigned to the lands. C 1/17/68; C 11/19/90. (Am. M98-2).

170.0067 Penalties. Penalties provided for at the time an assessment is made are not subject to increase by virtue of a subsequent amendment of the penalty statute. C 2/6/95. (M99-1).

170.0068 Penalty Assessments. In making penalty assessments, assessors should apply the penalty provided by statute at the time the assessment is made, even though the incorrect assessment was made at a time prior to enactment of the statutory penalty applicable at the time of the escape assessment. Tax penalties are civil in nature and do not involve the criminal law principle of ex post facto. C 9/26/96. (M99-1).

170.0069 Possessory Interests/Personalty. A county board of supervisors, when sitting as such, may require the assessor to place all possessory interest assessments on the secured roll. Personal property may, at the discretion of the county assessor, be secured to a possessory interest assessment on the secured roll if the certificate of security provided for in Revenue and Taxation Code section 2189.3 is issued. An assessment appeals board, even if composed of county supervisors, has no authority to determine the roll on which any given assessment is placed. C 11/9/79. (Am. M99-1).

170.0070 Reduction of Penalty. In the event that property has been overassessed and the assessment is ultimately reduced, the amount of a 10 percent penalty imposed pursuant to Revenue and Taxation Code Section 463 must also be reduced since the penalty is based upon the amount of the assessment. LTA 1/13/86 (No. 86/7).

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170.0080 Rounding of Value Calculations. For value determinations that involve the exercise of value judgment, it is permissible for an assessor to enroll taxable value after rounding off the value calculations. However, rounding is not appropriate for adjustments to base year values because such adjustments involve the application of an inflation factor to previously established values, and not an exercise of value judgment. C 9/21/78. (Am. 2000–2).

170.0085 Safe Harbor Lease Transactions. As the result of the Economic Recovery Act of 1981, corporations can buy or sell certain federal income tax benefits, Investment Tax Credits and the opportunity to claim Accelerated Cost Recovery System deductions. These benefits derive from acquisition of qualifying new business property.

A corporation acquiring new business property but not having sufficient net income to realize any benefit from such income tax benefits may sell such benefits through an agreement to lease the property. The corporation acquiring such benefits through a lease or sale/leaseback agreement is said to have established a safe harbor-sheltering of income from higher income tax.

Leases and sale/leaseback agreements may transfer rights of ownership of the property subject thereto, in addition to such income tax benefits. Thus, determination of ownership and whether the property is a fixture or other type of real property is important. In most cases, historical cost is the apparent approach to use in determining market value for property subject to a safe harbor lease. LTA 5/7/82 (No. 82/68).

170.0086 Safe Harbor Lease Transactions. A safe harbor lease has no bearing on the fair market value of the property for assessment purposes. The value of a property is the value of all the rights and benefits that are capable of private ownership, and that value is not altered when the owner of a property conveys some of those rights to another. LTA 1/13/84 (No. 84/7).

170.0087 Sale After Assessment. Nothing in Revenue and Taxation Code Section 405 nor in any other related section of the code (other than those applicable to supplemental assessments) authorizes the county assessor or the county to prorate assessments or taxes between the person owning a property on the lien date and a person who subsequently purchases it. The proration of property taxes is typically a matter of contract between the buyer and seller. C 7/8/88.

170.0088 Sales Price as Value. In *Dennis v. Santa Clara County* 215 Cal.App.3d 1019, the court held that assessors are not bound to accept a purchase price paid for real property in a concededly arm's length, open market transaction when there is a variable that skews the purchase price. The Revenue and Taxation Code Section 110 presumption that the purchase price is fair market value is rebuttable and may be overcome by values derived from use of the income and market valuation methods. LTA 5/11/90 (No. 90/30).

170.0090 Stagnant or Declining Values. Following the year a base year value is first enrolled, Revenue and Taxation Code Sections 51 and 2212 require that the value shall be factored by the statewide consumer price index up to a maximum of two percentage points each year.

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The correct value to be enrolled in any year is the lower of a property's factored base year value or its current market value. If the value of a property has leveled off or declined since the base year value was established, current market value would be the lower value and should be enrolled. Enrolling a current market value does not establish a new base year value, however, and factoring of the base year value should continue each year. When the value of a property increases over and above the current factored base year value, that value would again be the lower value and should be enrolled. LTA 2/19/82 (No. 82/25).

- 170.0095 **Stock Cooperative.** A stock cooperative is a corporation which is formed to hold title to improved real property, either in fee simple or for a term of years. Shareholders thereof receive a right of exclusive occupancy of a portion of the property.

Reappraisal upon the transfer of stock of a cooperative housing corporation, which constitutes a change of ownership under Revenue and Taxation Code section 62(h), is controlled by Revenue and Taxation Code section 65.1. Only the property unit transferred and the share in the common area reserved as an appurtenance of such unit is revalued. C 7/14/82.

- 170.0096 **Stock Cooperative.** A cooperative housing corporation has 164 residential units. Each shareholder owns one share of common stock of the corporation and has the exclusive right to occupy and possess a particular unit. Under Revenue and Taxation Code section 65.1(b), if a unit or lot within a cooperative housing corporation is purchased or changes ownership, only the unit transferred is reappraised. Thus, whenever a unit is purchased or changes ownership, the assessor is required to reappraise the property and establish a new base year value only for that unit. If the shareholders have not requested separate assessments under Revenue and Taxation Code section 2188.7 and the property tax increases as a result of the reappraisal of that unit, the corporation must apply the resulting tax increase to only the shareholder of that unit and cannot prorate it among the other shareholders. C 3/12/2007. (2008–1).

- 170.0105 **Subdivision Lots.** When a new subdivision map is filed and new lot parcels are created, there are no grounds for reappraisal. The base-year value placed upon the lots should be an allocated portion of the prior base-year value of the acreage involved. It is the Board's position that value should be allocated to the portion of the property designated as streets and right-of-ways as well as to the lots and that the streets be separately parcelized and assessed. Allocation may be done in several ways, but in those instances where the lots are relatively equal in utility, a square-foot basis is preferred.

When official acceptance of the land, i.e., the right-of-way, by the governmental entity occurs, usually after the streets, gutters, etc., have been completed, such land/street area becomes exempt from taxation. As for the street improvements, it is the Board's position that the appraisal unit is the entire subdivision acreage until the lots and/or right-of-ways are actually transferred. Thus, the value of all improvements within the subdivision should be allocated

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over the entire subdivision, including both the lot and street parcels. Again, there are several possible methods of allocation, but in most instances, a square-foot allocation is preferred.

When street right-of-ways and improvements are accepted by the governmental entity, it is the Board's position that only the value of land and improvement allocated to the street parcel should be removed from the roll. The value of the street improvements previously allocated to the lots should remain on the roll even though the street improvements are actually located on the street parcel. LTA 6/5/84 (No. 84/51).

- 170.0115 **Time Share Ownership.** Time share owners are joint owners having undivided interests in the property. The undivided interests may be in a specific unit or in a total project consisting of many units.

The reappraisal of undivided interests upon a change of ownership is controlled by Revenue and Taxation Code section 65(b). An interest of five percent or more must be transferred before reappraisal can take place, and then only the interest transferred is revalued. The interest transferred in time share transactions is generally specified on the deed.

The base year appraisal of a time share property, or portion thereof, eligible for valuation should be made on the basis of the market value of the time shares rather than on the basis of cost or comparability with sold properties held in ownership other than time share. While such properties may be physically similar, they are not directly comparable because of the difference in use. LTA 6/24/80 (No. 80/97).

- 170.0116 **Time Shares.** For both time-share estates, the right of occupancy in a time-share project which is coupled with an estate in the real property, and time-share uses, a license or contractual or membership right of occupancy in a time-share project which is not coupled with an estate in the real property, the preferred approach to value is the market approach. The purchase price of an individual time share, carefully adjusted for the influence of financing and for the inclusion of nonassessable items in the time-share package, such as household furnishings, memberships in time-share exchange networks and club memberships, and prepaid expenses, can be a reliable indicator of the time-share's value.

Revenue and Taxation Code sections 2188.8 and 2188.9 provide for the separate assessment of time-share properties. LTA 7/27/82 (No. 82/92); LTA 10/20/82 (No. 82/122).

- 170.0125 **Waiver of Statute of Limitations.** Revenue and Taxation Code section 532.1 authorizes the assessor and a taxpayer, by agreement, to extend the time period within which an assessment, correction, or claim for refund may be made. LTA 6/29/84 (No. 84/61).

- 170.0150 **Water Rights.** Water rights owned by a city in another county are not part of a flume, canal, ditch or aqueduct that is assessable by the Board but, rather, are assessable by the county assessor pursuant to section 11 of article XIII of the Constitution. C 10/22/84.

180.0000 ASSESSMENT APPEALS

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180.0005 **Agent.** An applicant may specify a corporation or other legal entity as an agent to represent him or her in assessment appeal proceedings. There is no requirement that a specific natural person be named as an agent. C 9/17/2001. (2003–1).

180.0007 **Allocation of Value.** Appeal of the allocation of value between land and improvements is not permitted under Revenue and Taxation Code section 51(b) but may only be brought under section 80(a)(3). C 11/9/95; C 1/4/99. (Am. M99–2).

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Property Taxes Law Guide
PROPERTY TAX ANNOTATIONS

ASSESSMENT APPEALS (Contd.)

- 180.0010 **Amendment of an Application.** Property Tax Rule 305, subsection (e)(2)(C)(i) provides that an appeals board may allow an applicant or the applicant's agent to make amendments to an application "to state additional facts claimed to require a reduction of the assessment that is the subject of the application." The phrase "additional facts" within the meaning of that subsection refers to the type of relief requested by the applicant and, thus, includes amendments that request a reduction based on an appeal of a different assessment, such as a change from decline in value relief to base year value reduction. The amendment provision supersedes former subsection (e) which prohibited any amendment after the last day for timely filing of an application if the amendment requested relief additional to or different than the relief originally requested in the application. C 5/31/01. (2002-1).
- 180.0012 **Amendment of an Application.** Property Tax Rule 305(e)(2)(C) provides that an appeals board may, upon request, allow an applicant to amend an application to state "additional facts claimed to require a reduction of the assessment that is the subject of the application" after the final filing date. The plain language of this provision and the rulemaking record evidence an intent to allow amendments seeking relief additional to or different in nature from that originally requested, such as the addition of a class of property within the appealed appraisal unit that could have been appealed at the time the application was filed. C 7/11/2001. (2003-1).
- 180.0020 **Appeal After Audit.** Revenue and Taxation Code sections 469 and 1605 provide that if an audit conducted pursuant to section 469 discloses property subject to an escape assessment, then all the property of the taxpayer at that location is subject to equalization for the year of such escape (unless the property was previously equalized for that year). The legislative intent of this provision was to afford the taxpayer a similar right to "open up" past assessments as the assessor has.
- Frequently, an assessor's audit discloses both under- and overassessments. Section 533 provides in such cases that the appropriate tax liabilities and refunds shall be offset, so the resulting tax bill or refund is a net figure. If the refund is greater than or equal to the escape, then no "escape assessment" is enrolled, but the taxpayer is entitled to an equalization hearing on the entire property for the year of the "escape". LTA 3/30/84 (No. 84/38).
- 180.0022 **Appeal After Audit.** The State Board of Equalization is charged with equalizing assessments among the counties, not resolving disputes involving assessments of individual properties. A taxpayer who seeks relief from an adverse assessment appeals board decision must follow the statutory procedures by paying the tax, filing a claim for refund, and thereafter, if necessary, filing a refund action. The remedies provided by statute afford an aggrieved taxpayer adequate due process. The Board's power under Government Code section 15606(h) is rarely invoked and is generally exercised only in instances where there is a clear violation of a constitutional or statutory property tax provision or administrative regulation, not in instances of statutory interpretation for which specific statutory procedures exist. C 3/17/97.

ASSESSMENT APPEALS (Contd.)

- 180.0024 **Appeal After Audit.** A property owner may apply for review, equalization, and adjustment of a county assessor's assessment with respect to the value of all property at the location of the owner's business after an audit of the value of trade fixtures and business tangible personal property has been made by the county assessor that discloses both an underassessment and overassessment of some of the property, resulting in no change to the original assessment. OAG 11/21/97 (No. 97–315, Vol. 80, p. 322). (M99–1).
- 180.0025 **Appeal After Audit.** If an audit does not disclose any property which has escaped assessment, then the appeal rights set forth in Revenue and Taxation Code sections 469 and 1605 are not available. This is in contrast to an audit situation in which properties are found to be underassessed and, therefore, subject to escape assessments, but no escape assessments are enrolled because the underassessed properties are netted against over-assessed properties. C 3/26/98. (M99–2).
- 180.0033 **Applicant.** An entity that assumes liability for payment of delinquent taxes does not become an "affected party" or an "assessee" with standing to appeal the assessments made prior to the foreclosure. A notice of unpaid taxes received by such an entity may not be considered as the equivalent of a notice of annual increase which commences the 60-day application filing period of Revenue and Taxation Code section 1603 when such notice was not required pursuant to Revenue and Taxation Code section 619. C 1/13/99. (2000–1).
- 180.0034 **Application.** The sufficiency of the property description contained in an application for reduction in assessment presents a question of fact to be decided by the assessment appeals board in the exercise of its authority to determine its own jurisdiction. C 12/7/93.
- 180.0035 **Application.** An assessment appeal in the form of a letter received during the application period may be treated as a timely filed, but incomplete, application of appeal. Prescribed forms should be completed within a reasonable time thereafter. C 9/21/79.
- 180.0036 **Application.** An appeal of only a supplemental assessment does not provide the assessor the opportunity to put an assessment of the same property on the regular roll before the appeals board. The application defines the assessment in issue.
- The provisions of Rule 324 subdivision (b) approves an equalization board's review of the value of an entire appraisal unit when a taxpayer appeals only a portion of the unit's value. It does not authorize the review of a value of a separate assessment of the same property. C 2/24/89.
- 180.0038 **Application Filing Date.** Applications for assessment reduction based on a property's loss in value must be made during the regular filing period. Proposition 8 made no changes to the appeal process. It merely authorized recognition of a property's loss in value even though there has been no new construction or change in ownership. C 11/27/89.

ASSESSMENT APPEALS (Contd.)

- 180.0039 **Application Filing Deadline.** The assessment appeal application filing deadline is November 30 unless a county assessor mails a value notice to every property owner pursuant to Revenue and Taxation Code section 619. The property tax bill issued by the county tax collector is not considered a value notice for purposes of determining the assessment appeal application filing deadline. C 5/6/2003. (2004-1).
- 180.0040 **Appraisal Unit.** Under Property Tax Rule 324 subdivision (b), a taxpayer which has properly appealed an escape assessment based on its possessory interest may request the board to value its fixed assets as a necessary part of its entire appraisal unit. C 2/8/94.
- 180.0041 **Appraisal Unit.** In an appraisal unit comprised of multiple properties, an escape assessment of one or more of those properties does not result in an escape assessment of all properties in the unit and does not affect the assessed values of the properties in the appraisal unit not subject to escape assessment. Thus, the assessments of those properties not subject to escape assessment may not be appealed because there has been no increase from the assessed values previously enrolled on the regular roll. The only exception is under certain circumstances involving a mandatory audit. C 3/5/99. (2001-1).
- 180.0045 **Base Year Value.** In *Sunrise Retirement Villa et al. v. Dear* (1997) 58 Cal.App.4th 948, the court held that an assessment appeals board has jurisdiction to hear an appeal to correct an alleged error in setting a base year value, not involving a judgment of value, in any year in which the error is discovered, if the assessor declines to make the correction pursuant to Revenue and Taxation Code section 51.5. The board's jurisdiction to hear such base year value appeals is not limited to the four-year statute of limitations in Revenue and Taxation Code section 80 subdivision (a)(3); but in order to trigger the application of section 51.5, a property owner must present to the assessor credible evidence of an error not involving value judgment, as opposed to an opinion, for any such claim. C 1/6/98. (M99-2).
- 180.0050 **Base Year Value Not Contested in Year Established.** Revenue and Taxation Code Section 80(a)(3) permits an application to be filed during the filing period for the year in which an assessment is placed on the roll or in any of the three succeeding years. Where no application is filed for the year in which the assessment is placed on the roll, but an application is filed in one of the next three years, Section 80(a)(4) provides that any reduction in value as a result thereof will apply only to that year and to subsequent years. C 6/28/82.
- 180.0060 **Base Year Value Previously Determined.** Revenue and Taxation Code Section 80 precludes any assessment appeal application which challenges a base year value previously determined by an assessment appeals board for an earlier assessment year. C 11/3/81.
- 180.0062 **Base Year Value Reduction.** A reduction to a base year value as the result of an assessment appeal pursuant to Revenue and Taxation Code Section 80(a)(4) is to be reflected on the roll for the year for which the appeal was timely

ASSESSMENT APPEALS (Contd.)

filed and thereafter. Subsequent rolls would include appropriate inflation adjustments. The taxpayer need not file multiple applications for reduction, even if the assessment appeals board's decision is delayed, thereby causing the assessor to carry over the old base year value during the time of the delay. C 8/29/86.

180.0064 **Doctrine of Res Judicata.** This legal doctrine is inapplicable to assessment appeals board decisions. An assessment appeals board's decision applies only to the particular appeal to which it relates. C 10/10/91; C 4/30/93.

180.0065 **Enrolled Value.** A taxpayer, who has timely and correctly filed an application for reduced assessment of an enrolled value on which the taxes have been levied, is entitled to dispute that value before the local board irrespective of whether or not the assessor has completed a reappraisal and issued a supplemental assessment. C 8/21/95.

180.0067 **Escape Assessment.** Subdivision (f) of Revenue and Taxation Code section 1605 expressly excludes escape assessments from the definition of assessments made during the "regular assessment period" for purposes of section 1605(a). An escape assessment, by definition, is not made within the regular assessment period. Thus, an application for appeal of an escape assessment must be filed within 60 days of the date on which the assessee is notified of the escape assessment, regardless of the month in which the escape assessment was made or the notice was mailed.

While a notice of proposed escape assessment sent pursuant to Revenue and Taxation Code section 531.8 is a form of notice, it is not the notice required by Revenue and Taxation Code section 534. The express terms of section 534 make the date of notice the effective date of the escape enrollment for all purposes, including equalization. Therefore, an appeals board has no jurisdiction to hear an application filed in response to the notice of proposed assessment required by section 531.8 since such an application is filed prior to the enrollment and the date of the notice of the assessment and prior to the date the tax bill has been received. C 5/12/98. (2000-1).

180.0068 **Escape Assessment.** An assessment appeals application is not timely if it is filed prior to the time the escape assessment has been enrolled and the assessee has received the notice required by Revenue and Taxation Code section 534. An escape assessment is not effective for any purpose, including review, equalization and adjustment by an appeals board, until it is enrolled and the assessee is properly notified. An application filed in response to the notice of proposed escape assessment required by section 531.8 is invalid if it is filed prior to enrollment and the date the notice has been received. C 1/20/98. (M99-2).

180.0069 **Escape Assessment and Proposition 8 Reductions.** A memorandum of lease evidencing a long-term lease was executed in 1989 but was not reported as a change in ownership. The document was recorded in 1997 and, upon discovery, the assessor determined that a change in ownership had occurred in 1989 upon execution of the lease. The assessor established a new base year value

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for the property and made escape assessments for assessment years 1991–92 through 1997–98 since the four-year statute of limitations period of Revenue and Taxation Code section 532 for making escape assessments had never commenced.

An application appealing an escape assessment may validly seek a reduction in base year value and a Proposition 8 reduction to fair market value. An appeals board has discretion to determine such a decline in value, even though the application seeks the same relief as an application for a Proposition 8 decline in value appeal, which must ordinarily be filed during the regular filing period. An escape assessment places the entire value of the property in issue and, for that reason, an applicant is not limited to appeal of only the new base year value for the property. C 6/3/98. (2000–1).

180.0071 Evidence. The assessments of properties that are comparables to the property that is the subject of an assessment appeal should be admitted as evidence of the value of the subject property, provided that the assessments have the same base year. C 7/25/85.

180.0071.005 Evidence. Generally, the appraiser who prepared the appraisal need not be present at the hearing if, in the opinion of the appeals board, the appraisal itself includes information that adequately supports the value determination. Any relevant evidence is admissible at an appeals board hearing. However, the appeals board has discretion to exclude any evidence that is unreliable. A one-page statement of value that does not include a description of the property, evidence of adjustment, or any analysis or supporting data is unreliable as evidence of value because it lacks any foundational factual or analytic support for its value conclusions. C 4/1/2005. (2006–1).

180.0071.010 Evidence. The testimony of an appraiser of the assessor's office who did not prepare the appraisal is admissible provided that it is relevant. Revenue and Taxation Code section 1610.2 requires that either the assessor or a deputy attend all hearings of the appeals board and may make any statement or produce evidence on matters before the board. Therefore, the assessor has the authority to designate a different deputy assessor and appraiser than those who prepared the appraisal, and such designees have the right to offer evidence. Such evidence is admissible so long as it is relevant and the appeals board determines that it is reliable. C 4/15/2005. (2006–1).

180.0072 Federal Deposit Insurance Corporation (FDIC). Pursuant to 12 U.S.C.A. Section 1825(b)(1) FDIC has the right to challenge the valuation of property held by their immediate predecessor of title, notwithstanding that the California statutory appeal period has expired. C 4/8/94.

180.0073 Fixtures. An item of personalty may be characterized as a fixture or as personal property depending on how that item is attached to the real property and the intent of the owner. If the appraiser classifies the item as a fixture, it becomes real property. As real property, assessors are required to establish a base year value upon a change in ownership or new construction. A base year value of

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fixtures may be appealed within 60 days of the notice of supplemental assessment. Alternatively, the base year value may be appealed during the regular filing period for the first year of enrollment on the current local roll, or during the regular filing period for any of the next three succeeding years.

If the real property and fixtures have been appraised and assessed together as a unit, an appeals board may adjust the values of property not under protest under Revenue and Taxation Code section 1610.8 as long as the property's base year value is still eligible for review. Conversely, if the real property and fixtures were separately assessed, an appeals board may not adjust the value of property not under protest or if the property's base year value is not eligible for review. C 11/23/2005. (2006-2).

180.0074 Formal Exchange of Information. Revenue and Taxation Code section 1606 provides for the pre-hearing production of information by both sides during the course of an assessment appeal as a means of limited discovery to prevent surprise during the hearing. The required information must be sufficient to put the opposing party on "reasonable notice" as to the testimony and evidence to be introduced at the hearing, but the details of the evidence and testimony need not be exchanged. C 12/8/97. (M99-2).

180.0085 Land Conservation Act Homesite Value. Homesites on lands subject to restricted value assessment under California Land Conservation Act contracts are valued as separate appraisal units because Revenue and Taxation Code section 428 provides that the restricted value statutory provisions shall not apply to residences and residential sites of a reasonable size. Thus, a property owner may appeal the assessed value of the homesite as an appraisal unit, separate from the land under contract, if he or she believes that the fair market value of the homesite property on the lien date is lower than the assessed value determined by the assessor. C 8/10/2000. (2002-1).

180.0086 Material Value. Appeal applicants do not have to overcome the material value standard prescribed by Property Tax Rule 305.3(b)(2) to obtain an equalization hearing on all property at a location when a county assessor has issued audit findings identifying property subject to an escape assessment. C 7/5/2006. (2007-1).

180.0090 Roll Changes and Proposition 8 Reductions. A timely filed pending application for reduction in assessment that appeals a decline in value of property is not invalidated by supplemental or escape assessments made subsequent to the filing of the application. If the application indicates that the taxpayer believes the value of the property to be less than the assessment shown for the current roll year, the appeals board has both the jurisdiction and the responsibility to decide that issue. C 5/29/2001. (2002-1).

180.0091 Roll Correction. An application for changed assessment may not be filed to appeal a change in assessed value resulting in a refund due to an audit or to a correction made pursuant to Revenue and Taxation Code section 4831, subdivision (b). A roll correction or roll change reducing a value and resulting in

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a cancellation or refund is not an assessment made outside of the regular assessment period which would allow a taxpayer to file an application for changed assessment pursuant to Revenue and Taxation Code section 1605. C 3/31/2000. (2001-1).

180.0094 **State-Assessed Property.** Each year the Board adopts unitary values for all state assessees. As a result, the only means for a correction to be made to the Board roll, whether as the result of an appeal of the unitary assessment by an assessee or as the consequence of an audit of an assessee by Board staff, is by the approval of the Board. In other words, once a unitary value has been adopted by the Board, only a vote of the Board can change a value on the Board roll. C 7/15/2003. (2004-1).

180.0095 **Stipulation.** As of January 1, 1988, Revenue and Taxation Code Section 1603 provides that even when there is a stipulation to a value judgment error, an assessment appeal application must be filed within 12 months following the month in which the assessee is notified of the assessment. Consistent with Section 1605, an assessee's receipt of a tax bill based upon the assessment suffices as notice. LTA 6/13/88 (No. 88/43).

180.0096 **Stipulation.** The stipulation provided in Revenue and Taxation Code Section 1603(c), is applicable to current roll values established pursuant to Section 110.1(f) and not limited to corrections of a base year value as provided in Section 51.5(b). C 2/15/95.

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ASSESSMENT APPEALS (Contd.)

- 180.0097 **Stipulation.** A written stipulation provided to an assessment appeals board should contain a statement of the facts that justify a change in a value on the assessment roll. The statement need not be lengthy but should fairly explain the basis for the amount of the reduction, e.g. if the cost approach has been used, it may be a change in trend factors; for the income approach, perhaps a change in the capitalization rate or the income stream. If the method of appraisal has been changed, the reason for the change and an explanation of the appropriateness of the new methodology should be included in the stipulation. C 9/18/86.
- 180.0098 **Stipulation.** A base year value established by an assessment appeals board based on information provided in a stipulation as to value between the assessor and a taxpayer is not subject to subsequent appeal pursuant to Revenue and Taxation Code section 80 based on the taxpayer's allegation of newly discovered facts. Further, a stipulation to value is not necessarily an admission of error by the assessor. C 2/21/91.
- 180.0099 **Substitution of Applicant.** There is no statute or rule that would permit a non-filing, subsequent owner of property to assert the status of "party affected" in the face of a valid application wherein the designated agent of the owner of the property at the time the application was filed is prepared to conduct the hearing. C 11/8/96.
- 180.0110 **Tenant Improvements.** An assessee may limit an assessment appeal to the valuation of newly constructed improvements which have been supplementally assessed without causing reappraisal and reassessment of the property to which the new improvements have been added. The last sentence of Property Tax Rule 307(a) applies to assessments of properties that have been appraised and assessed together and prevents application for partial reduction from limiting board review of the entire assessment. C 11/30/90.
- 180.0115 **TPZ Site Classifications and Values.** Timberland Production Zone (TPZ) site classifications and values used by assessors for valuation purposes are, like assessors' other value judgments, appealable annually to the assessment appeals board or county board of supervisors meeting as a county board of equalization. (Revenue and Taxation Code sections 1601, et seq.) C 9/15/98. (M99-2).
- 180.0120 **Transfer of Base Year Value.** Revenue and Taxation Code section 80 is available to challenge the base year value of a replacement dwelling on the ground that all of the requirements of Revenue and Taxation Code section 69.5 have been met and that, therefore, the base year value of the original property should be transferred to the replacement dwelling. Pursuant to section 80(a)(5), any resulting reduction in assessment under section 80 shall apply, only to the assessment year in which the appeal is filed and prospectively thereafter. If, however, the appeals board finds that the value of the original property was higher than determined by the assessor, such value increase is effective for the date as of which the change in ownership occurred. And, as the result of Revenue and Taxation Code section 531, the assessor must make escape assessments for each year there was an underassessment resulting from such undervaluation. C 7/2/96. (Am. M99-2)

ASSESSMENT APPEALS (Contd.)

180.0140 **Withdrawal of Application.** If an application for changed assessment also constitutes a claim for refund and an appeals board permits a complete withdrawal of the application without consideration, then the claim for refund is also withdrawn and should not be processed because the withdrawal of the application constitutes a withdrawal of the claim for refund. On the other hand, in the event that an application for changed assessment that also constitutes a claim for refund is acted upon by the appeals board, whether the result is no change or otherwise, the disposition of the application also operates to dispose of the claim for refund. C 5/22/2000. (2001–1).

190.0000 ASSESSMENT APPEALS BOARD

See Assessment Appeals

County Board of Equalization

Situs

190.0008 **Allocation of Value.** A local assessment appeals board has jurisdiction to hear supplemental assessment and base year value appeals involving the proper allocation of a total property value between land and improvements for applications filed within the time limitations periods of Revenue and Taxation Code section 1605(b) for supplemental assessments or Revenue and Taxation Code section 80 for base year value appeals. C 1/4/99. (2000–1).

190.0011 **Application.** An appeal of only a supplemental assessment does not provide the assessor the opportunity to put an assessment of the same property on the regular roll before the appeals board. The application defines the assessment in issue.

The provisions of Rule 324(b) approves an equalization board's review of the value of an entire appraisal unit when a taxpayer appeals only a portion of the unit's value. It does not authorize the review of a value of a separate assessment of the same property. C 2/24/89.

190.0012 **Application.** The sufficiency of the property description contained in an application for reduction in assessment presents a question of fact to be decided by the assessment appeals board in the exercise of its authority to determine its own jurisdiction. C 12/7/93.

190.0013 **Application.** An application for reduction in assessment constitutes a claim for refund only if it is specifically so stated to be. Failure to claim a refund as part of an application does not prevent the filing of such a claim within four years of the date on which taxes were paid or as otherwise provided in Revenue and Taxation Code Section 5097. C 10/2/85.

190.0014 **Application.** An assessment appeals application lacking an authorized signature of a corporate officer is incomplete and invalid, and pursuant to Property Tax Rule 309, the two-year period within which to hear applications does not apply. However, the rule also provides that an applicant shall not be denied a timely hearing for failure to file a timely and complete application unless the appeals board, within two years of filing, notifies the applicant in writing of

ASSESSMENT APPEALS BOARD (Contd.)

such denial. A letter from the assessment appeals board to the applicant providing notice of the defect and giving the applicant the opportunity to correct it constitutes notice that the application will be considered invalid and will not be heard until such authorization is submitted. Where the appeals board received the authorization only about one month before the expiration of the two-year period, it acted properly by requiring a waiver before reopening the application. Alternatively, the application would have remained closed. C 7/23/97. (M99-1).

190.0015 Application. A county can modify the Board-prescribed assessment appeals application by adding a request for the applicant to sign the application in a particular color of ink, because such a request does not conflict with the prescribed instructions or with any statutes or regulations. C 4/19/2000. (2001-1).

190.0016 Application. Government Code section 16.5 authorizes the use of and prescribes guidelines for electronic or digital signatures “in any written communication with a public entity . . . in which a signature is required or used.” The Revenue and Taxation Code and Board property tax rules do not prohibit use of such signatures and, therefore, an assessment appeals board clerk has discretion to permit an electronic or digital signature, provided that the clerk believes the signature complies with the requirements of Revenue and Taxation Code section 1603 and Property Tax Rule 305 governing the contents of a valid application. C 12/8/2000. (2002-1).

190.0021 Application Filing Fee. There exists no express statutory authority for a county board of supervisors to adopt a rule requiring payment of a deposit for an assessment appeals hearing. The fact that there are statutorily authorized fees for other services in connection with the appeals process indicates that the Legislature viewed fees and other charges as a matter of statewide concern and intended to circumscribe counties’ authority to act in this area. Thus, a county has no authority to adopt a rule requiring payment of a deposit. Further, the rulemaking authority conferred on counties by section 16 of article XIII of the California Constitution is limited to the adoption of rules of notice and procedures even when they do not involve matters of statewide concern. C 11/30/2001. (2003-1).

190.0025 Bankruptcy Automatic Stay Exception. The filing of a bankruptcy petition triggers an automatic stay or suspension of commencement or continuation of a judicial, administrative, or other action against the debtor as well as any action to recover a pre-petition claim or debt pursuant to 11 U.S.C. section 362(a)(1). Among the specified exceptions to the automatic stay requirement, section 362(b)(9)(D) provides an exception for “the making of an assessment for any tax” In *Delpit v. Commissioner* (9th Cir.1994) 18 F.3d 768, the Ninth Circuit Court of Appeals held that a property tax assessment appeal is a continuation of the comprehensive tax assessment process in California. Thus, as a step in the tax assessment process, an assessment appeal is an exception to the automatic stay as provided by subdivision (b)(9)(D). C 8/29/2003. (2004-1).

ASSESSMENT APPEALS BOARD (Contd.)

- 190.0030 **Changing Rolls.** An assessment appeals board does not have the power to move a possessory interest assessment from the unsecured roll to the secured roll. Revenue and Taxation Code Section 107, which authorizes boards of supervisors to place possessory interests on the secured roll, applies to boards of supervisors sitting as boards of supervisors, not as assessment appeals boards. The authority of an assessment appeals board is limited to correction of assessor's clerical errors and errors in judgment as to value. C 11/9/79.
- 190.0033 **Decision.** An applicant's failure to file an amended application, after notice of its deficiency, until a month before the expiration of the two-year period in which an appeals board must render its decision provides a basis for the appeals board's request of the applicant for a waiver of the two-year statute of limitation before consideration of the amended application. There is no statute or rule that prohibits an appeals board's acceptance and action on a waiver filed more than two years after the filing of the original, incomplete application for hearing. C 7/23/97. (M99–2).
- 190.0034 **Disaster Relief.** An assessment appeals board has jurisdiction to hear and decide an application filed by a property owner appealing the assessor's denial of a claim for the transfer of a base year value for real property damaged or destroyed by disaster under Revenue and Taxation Code section 69. An application may be filed during the regular filing period for the year in which the new base year value is established for the replacement property or in any of the three succeeding years. C 10/20/2004. (2005–2).
- 190.0035 **Duty to Equalize Assessments.** An Assessment Appeals Board is charged with the assessment equalization function, and once a Board of Supervisors acts to establish such a board, the power to equalize assessments passes solely to the Assessment Appeals Board. Such is constitutionally mandated in section 16 of article XIII of the State Constitution. C 6/10/80.
- 190.0037 **Evidence.** An individual appeals board member may not introduce comparable sales evidence at an appeals hearing. The property tax statutes and regulations require appeals board members to decide applications based solely on evidence presented by the parties or obtained by the board acting as a body. Therefore, if an appeals board member wishes to hear or to obtain evidence not provided by the parties, he or she must make a motion to the appeals board. If the appeals board approves the motion, then pursuant to Revenue and Taxation Code section 1609.4, it may issue subpoenas or take other action necessary to obtain the evidence or testimony. C 2/2/99. (2000–1).
- 190.0038 **Final Determination.** The two-year period in Revenue and Taxation Code Section 1604(c), which provides that a board must make a final determination on an application for reduction within two years or the applicant's opinion of value shall be used for the levy of taxes, should commence with the actual date of filing of each individual application. C 7/21/95.
- 190.0039 **Final Determination.** An assessment appeals board may postpone indefinitely the hearing on an assessment appeal by mutual agreement in writing or on the record with the taxpayer, despite the assessor's objection. C 6/21/96. (M99–1).

ASSESSMENT APPEALS BOARD (Contd.)

- 190.0041 **Final Determination.** An assessment appeals board's hearing and decision on a hearing officer's recommendation must be completed within two years to comply with Revenue and Taxation Code section 1604(c). If the appeals board fails to hear and to make a final determination within the prescribed two-year period, then the assessor is required to enroll the applicant's opinion of value, regardless of whether the applicant requests relief. A taxpayer's claim for refund of taxes resulting from such relief must be filed within four years of the payment of the taxes sought to be refunded pursuant to Revenue and Taxation Code section 5096. C 1/18/2001. (2003–1).
- 190.0044 **Interpretation of Exemption Terms.** An assessment appeals board does not have the jurisdiction to interpret Property Tax Rule 138 (Exemption for Aircraft Being Repaired, Overhauled, Modified or Serviced) by defining the terms used therein because such a determination would constitute a hearing on a application appealing a denial of a qualification for an exemption. C 6/29/2004. (2005–2).
- 190.0045 **Jurisdiction.** An assessment appeals board has authority to determine the proper classification of land based on its use under provisions of the Williamson Act. The board's jurisdiction is particularly evident in situations involving enforceable restrictions which by law impact property values. C 7/8/91.
- 190.0048 **Jurisdiction—Base Year Value.** In *Sunrise Retirement Villa et al. v. Dear* (1997) 58 Cal.App.4th 948, the court held that an assessment appeals board has jurisdiction to hear an appeal to correct an alleged error in setting a base year value, not involving a judgment of value, in any year in which the error is discovered, if the assessor declines to make the correction pursuant to Revenue and Taxation Code section 51.5. The board's jurisdiction to hear such base year value appeals is not limited to the four-year statute of limitations in Revenue and Taxation Code section 80 subdivision (a)(3); but in order to trigger the application of section 51.5, a property owner must present to the assessor credible evidence of an error not involving value judgment, as opposed to an opinion, for any such claim. C 1/6/98. (M99–2).
- 190.0050 **Jurisdiction to Hear Applications for Reassessment.** The local board of equalization itself has the ultimate responsibility to rule on the question of its own jurisdiction. However, it would be proper if the board established for the clerk certain specific guidelines for determining which applications were untimely filed, and authorized the clerk to notify such applicants of such fact and advise them that they may request a hearing pertaining only to the issue of the board's jurisdiction. OAG 3/30/76 (No. CV 75-344, Vol. 59, p. 182).
- 190.0052 **Jurisdiction to Hear Application for Reassessment.** A local assessment appeals board has jurisdiction to hear an appeal involving the property allocation of a total property value between land and improvements. If special assessments are at issue, an appeal involving the proper allocation of a total value should be allowed. If reallocation of a total value would serve no

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purpose, however, hearing should be denied. Also, a local board has jurisdiction to decide legal issues when such a decision is necessary to reach a conclusion on a valuation issue. C 1/22/80; C 3/28/80.

190.0053 **Jurisdiction to Hear Situs of Aircraft.** No court has specifically ruled on whether or not a general aircraft situs question can be heard by an assessment appeals board. However, since a determination as to situs is dependent upon factual matters, hearing before an appeals board appears appropriate. Moreover, a hearing would avoid any question concerning exhaustion of administrative remedies upon judicial review. Conflicts in evidence and testimony demonstrating aircraft, location, and time duration should be resolved by reference to the flight and maintenance logs for the subject aircraft. C 4/20/90. (M99–1).

190.0054 **Jurisdiction to Increase Assessment.** Once filed, an application for reduction cannot be voluntarily withdrawn by the applicant. The assessment appeals board retains jurisdiction, and, after notice and an opportunity to be heard, may increase the value on its own motion even if the assessor has agreed with the applicant that a reduction should occur, the reduction has been enrolled, and refund issued prior to the decision by the assessment appeals board. OAG 8/14/97 (No. 97–308, Vol. 80 p. 224). (M99–2).

190.0055 **Jurisdiction—Welfare Exemption.** Jurisdiction to make determinations and findings on the eligibility of property for the welfare exemption lies exclusively with the State Board of Equalization and the assessor, who jointly administer the exemption under Revenue and Taxation Code section 254.5. A finding by the Board staff that property is ineligible for the exemption is appealable only to the Board. A finding by an assessor that property is ineligible for the exemption is not appealable to an assessment appeals board. That denial is grounds for the filing of a claim for refund as well as for a suit for refund, but not for a hearing by a local board. C 3/11/94. (M99–1).

190.0058 **Meetings of Multiple Panels.** Two separate panels of the same assessment appeals board can be in session concurrently to either hear cases or deliberate under certain circumstances. Revenue and Taxation Code section 1622.5 provides that in counties in which two or more boards have been created, the clerk may assign one or more members from one panel to serve temporarily as members of another board. The statute then provides for the appointment of alternate members for each board, who are to serve when any regular member of the board is temporarily unable to act as a member of the board. Under this reading, there could be as many as ten separate panels created from a five member board to hear ten separate appeals. Since there would always be overlapping membership, however, the panels thus created could not meet or deliberate at the same time unless a qualified alternate serves. C 11/5/99. (2001–1).

190.0059 **Morgan Property Taxpayers’ Bill of Rights.** Legislation, effective January 1, 1994, contains numerous provisions relating to assessment appeals,

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escape assessments, and information to be provided assessees, and it establishes “The Morgan Property Taxpayers’ Bill of Rights.” The State Board of Equalization is required to designate an independent “Property Taxpayers’ Advocate” who is to be responsible for reviewing the adequacy of procedures relating to the distribution of information regarding property tax assessment matters among the Board, assessors, and taxpayers and of procedures relating to the expeditious handling of Board, assessor, and taxpayer inquiries, complaints, and problems. LTA 10/12/93 (No. 93/62); LTA 12/30/93 (No. 93/80). (Am. M99-1).

190.0060 Necessity for Filing Claim for Refund. An appeal by an assessee to the County Board of Equalization for relief is a prerequisite to any refund action where the question is one of value, but where the question is one of law, an assessee may proceed directly to court. C 9/20/79.

190.0061 Necessity for Filing Claim for Refund. While Revenue and Taxation Code Section 5097(b)(2) and (c)(2) authorizes the filing of a claim for refund as part of an application for the equalization of a regular or an escape assessment, it does not authorize anyone other than a board of supervisors to grant a refund. If a claim for refund filed as part of an assessment appeal is denied, the exhaustion of administrative remedies prior to filing a law suit requirement is satisfied. C 10/26/84.

190.0065 Open Meetings. The Ralph M. Brown Act (Government Code sections 54950-54962) does not apply to the hearings of a county board of supervisors when acting as the county board of equalization or to the hearings of an assessment appeals board. OAG 6/20/96 (No. 95-1207, Vol. 79, p. 124); C 2/16/96. (M99-1).

190.0070 Penalty Review Authority. The authority of an assessment appeals board under Property Tax Rule 302(b) to review, equalize, and adjust penal and escape assessments, excluding only Revenue and Taxation Code Section 531.1 escape assessments, extends to 25 percent penalty assessments imposed pursuant to Section 504 of the Code. C 2/8/80.

190.0073 Presumption Affecting Burden of Proof. The presumption affecting the burden of proof in favor of the assessee who has supplied all information as required by law to the assessor in any administrative hearing involving the appeal of an escape assessment as provided for in Revenue and Taxation Code section 167 applies to all equalization hearings held subsequent to January 1, 1996, even if the fiscal years and protested escape assessments relate to periods prior thereto. C 10/24/96; C 10/30/96. (Am. M99-1).

190.0074 Purchase Price Presumption. The presumption that a purchase price is “full cash value” or “fair market value” as provided for in Revenue and Taxation Code section 110(b) applies to all equalization hearings in progress or held subsequent to January 1, 1989, even if the fiscal years and protested assessments relate to periods prior thereto. C 5/10/89.

ASSESSMENT APPEALS BOARD (Contd.)

190.0075 **Res Judicata.** This legal doctrine is inapplicable to assessment appeals board decisions. An assessment appeals board's decision applies only to the particular appeal to which it relates. C 10/10/91; C 4/30/93. (M99–2).

190.0078 **Rules.** An assessment appeals board has no legal authority to pass resolutions through which the board adopts rules of notice and procedures, such as a rule which authorizes the clerk to schedule a preliminary hearing if requested by one of the parties to an assessment appeal.

Article XIII, section 16 of the California Constitution vests authority in county boards of supervisors, and not the assessment appeals boards, to adopt rules of notice and procedures for assessment appeals boards. Thus, the failure by the board of supervisors to properly pass the resolution renders the rule void and unenforceable. C 6/16/99. (2001–1).

190.0080 **Trial de Novo.** A Superior Court called upon to review a local assessment appeals board decision will not receive new evidence of value but will only review the record of the hearing before the board. The court will only hear the case for the following reasons:

1. Lack of due process; or
2. Actual or constructive fraud; or
3. Abuse of discretion; or
4. An erroneous appraisal method incapable of producing the correct value. C 7/21/78.

ASSESSOR

See County Assessor

195.0000 AUDITS

See Mandatory Audits

195.0010 **Notice of Overassessment.** Upon audit, whether mandatory or nonmandatory, whenever overassessments are discovered, taxpayers should be notified that a claim for cancellation or refund of taxes based on such overassessment should be initiated. LTA 8/14/86 (No. 86/62).

B

BANKRUPTCY

See Change in Ownership

200.0000 BASE YEAR VALUE TRANSFER

See Change in Ownership

200.0005(a) PRINCIPAL RESIDENCE

200.0006 Appeal. Revenue and Taxation Code section 80 is available to challenge the base year value of a replacement dwelling on the ground that all of the requirements of Revenue and Taxation Code section 69.5 have been met and that, therefore, the base year value of the original property should be transferred to the replacement dwelling. Pursuant to section 80(a)(5), any resulting reduction in assessment under section 80 shall apply only to the assessment year in which the appeal is filed and prospectively thereafter. If, however, the appeals board finds that the value of the original property was higher than determined by the assessor, such value increase is effective for the date as of which the change in ownership occurred. And, as the result of Revenue and Taxation Code section 531, the assessor must make escape assessments for each year there was an underassessment resulting from such undervaluation. C 7/2/96. (M99-2).

200.0007 Appeal. A properly filed application appealing the denial of a claim for a base year value transfer pursuant to Revenue and Taxation Code section 69.5 vests an appeals board with jurisdiction to determine whether the claimant meets the requirements of that section, including the determination of the full cash value of the original property as defined by subdivision (g)(2). The applicant is a “party affected” within the meaning of Property Tax Rule 301 and is entitled to a full hearing on the merits of the application. Moreover, the current owner of the original property is also a party affected and has the right to participate as a party to the matter in the same manner as the applicant if any value increase determined by the appeals board will result in an increased tax liability for the current owner. Therefore, an appeals board is required to notify the current owner of its intention to hear and decide an application appealing such a denial when the full cash value of the original property is at issue. C 7/5/2002. (2004-1).

200.0010 Calculation. When a person sells his or her principal residence valued at \$198,000 and purchases a one-third interest in a residence valued at \$390,000, the purchased property is ineligible to receive the base year value of the former residence because the replacement dwelling is not of equal or lesser value. Although the purchaser’s interest in the new residence is only valued at \$130,000, Revenue and Taxation Code Section 69.5 makes it clear that comparison of values must be between the total properties involved and not just a fractional interest. C 2/7/92.

200.0011 Calculation. If a person sells his house and lot and purchases a home or a mobilehome on rented land, the value of the sold lot and home should be used to determine if the value of the replacement property satisfies the equal to or less than value test. When an original property is a mobilehome or structure

**BASE YEAR VALUE TRANSFER
PRINCIPAL RESIDENCE (Contd.)**

located on leased land, the value of the land is not included for purposes of either transferring its base year value or making value comparisons. C 12/22/87.

200.0020 Claimant (New Spouse). Revenue and Taxation Code section 69.5(b)(7) provides that a claimant for property tax relief under section 69.5 may not have previously been granted such relief. In addition, section 69.5(g)(9) defines “claimant” for purposes of the section to include the spouse of a person who previously claimed relief under section 69.5 if that spouse is a record owner or co-owner of the replacement dwelling. Thus, if A and B are married and record owners of property which has received the benefits of section 69.5, then neither A nor B are eligible for future benefits under that section. Furthermore, if (1) A and B divorce, (2) A marries C and (3) A and C become co-owners of record of C’s replacement dwelling, C will not be eligible for relief under the section with respect to that dwelling since A also would be a claimant for purposes of C’s claim. C 8/26/87. (M99–2).

200.0023 Consideration. Revenue and Taxation Code section 69.5 requires that an original property be sold and a replacement property be purchased. The term “purchase” is defined by Revenue and Taxation Code section 67 as requiring consideration. Consideration is not limited to the payment of cash. Consideration could include the exchange of other property, the assumption of a debt, the cancellation of an outstanding debt, or the creation of a debt. Further, nothing in section 67 states that the consideration must be equal in value to the value of the property transferred. While a transfer of property for nominal value should be rejected on the theory that the alleged “purchase” is a sham, the term “purchase” could include a transfer for substantial consideration even though the amount was less than the full cash value of the property received. How “little” consideration is or would be “substantial” consideration is a question of fact to be determined by the assessor on a case-by-case basis, considering all available evidence. C 10/31/2000. (2002–1).

200.0024 Consideration. Revenue and Taxation Code section 69.5 requires that a qualifying replacement property be purchased or newly constructed. “Purchase” is defined in section 67 as “a change in ownership for consideration.” A claimant inherits a residence from a family member and claims it as a replacement property asserting that the decedent devised it to him in exchange for personal services and other assistance given to the decedent during her lifetime. Those services and assistance do not constitute consideration; therefore, the residence does not qualify as a replacement property, unless the claimant can prove by clear and convincing evidence that a legally enforceable agreement existed to transfer the property in exchange for those services and assistance. C 11/4/2002. (2004–1).

200.0030 Exchange. The transfer of an original property for a replacement dwelling in an Internal Revenue Code section 1031 exchange constitutes a sale of the original property for purposes of Revenue and Taxation Code section 69.5. Thus, the exchange would qualify for relief under that section provided all other requirements are met. C 8/11/2003. (2004–1).

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PRINCIPAL RESIDENCE (Contd.)**

200.0035 Historical Property. Revenue and Taxation Code section 69.5(e) provides that this section does not apply unless the transfer of the original property is a change in ownership that either (1) subjects the property to reappraisal at its current fair market value in accordance with section 110.1 or 5803 or (2) results in a base year value transferred to it from another property under sections 69, 69.3, or 69.5. The fact that an original property is a historical property that is enforceably restricted under a Mills Act contract and annually valued under Revenue and Taxation Code section 439.2 does not disqualify the property as an original property because section 439.2(d) provides that the restricted valuation cannot exceed a valuation under either section 110 or 110.1. In order to comply with subdivision (d), an assessor is thus required to reappraise an enforceably restricted historical property at its current fair market value in accordance with section 110 and its full cash value in accordance with section 110.1. C 1/13/2005. (2005-2).

200.0040 Licensed Mobilehome. The transfer of a licensed mobilehome does not qualify a replacement real property dwelling for the benefit of Revenue and Taxation Code section 69.5. The replacement dwelling would not qualify even if there were mobilehome accessories on the original property that constitute real property subject to property tax. C 3/23/89; C 6/26/91.

200.0041 Licensed Mobilehome. A mobilehome subject to the Vehicle License Fee does not, by itself, qualify as a replacement dwelling under Revenue and Taxation Code section 69.5. But when the replacement property consists of a licensed mobilehome that serves as a place of abode *and* the land on which it is situated, transfer of the original property's base year value should be made up to, but not exceeding, the market value of the land and any miscellaneous improvements of the replacement property. C 1/28/2000. (2001-1).

200.0043 Life Estate. Husband owned a property which was his and his wife's principal residence. Prior to his death, he transferred an undivided 10 percent interest to his children. Upon his death, the remaining 90 percent interest was placed in an irrevocable trust for the benefit of his wife for her lifetime. Since the wife, the life estate holder, is considered the owner of the property for property tax purposes, the wife will qualify to transfer the base year value under Revenue and Taxation Code section 69.5 upon the sale of the property if all of the other requirements are met. C 6/6/2006. (2007-1).

200.0050 Multiple Owners. A claimant who is otherwise qualified will not be denied the benefits of Revenue and Taxation Code Section 69.5 if his/her interest in a replacement dwelling is a co-ownership (either joint tenancy or tenancy in common) whereas his/her interest in the original property was that of a sole owner. Likewise, if multiple owners of a property sell it and buy a replacement dwelling and each owner retains an interest (the section does not require proportional ownership interests), the claimant qualifies. LTA 2/6/2006 (No. 2006/010). (Am. 2007-1).

200.0053 Multiple Units. An apartment over a garage that was not rented but rather used for guests and family members may be considered as part of the

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PRINCIPAL RESIDENCE (Contd.)**

principal residence unless there is evidence that the homeowner executed a lease or otherwise used the apartment for purposes incompatible with the homeowners' exemption. C 10/7/2002. (2004-1).

200.0055 **Notice to Claimant.** Revenue and Taxation Code section 69.5 does not require that an assessor send a separate notice informing a claimant that his or her claim for transfer of a base year value has been granted. Upon the transfer of the base year value from the original property and adjustment of the base year value of the replacement dwelling, the assessor is required only to provide notice of supplemental assessment pursuant to Revenue and Taxation Code section 75.31. C 11/6/97. (M99-1).

200.0059 **Ordinance.** An ordinance permitting intercounty base year value transfers may not restrict the relief provided by Revenue and Taxation Code section 69.5 only to severely and permanently disabled persons. C 6/7/2000. (2001-1).

200.0061 **Original Property.** For purposes of the statutes permitting the transfer of base year values for persons over age 55, each unit of a multiunit dwelling shall be considered a separate "original property." If a person lives in one side of a duplex he or she owns, only the value of the one side may be considered in determining whether or not the "equal or lesser value" requirement of Revenue and Taxation Code Section 69.5 has been satisfied. C 9/21/89.

200.0062 **Original Property.** The status of a property as a duplex or a single family residence is, for purposes of Revenue and Taxation Code Section 69.5, determined as of the date the property is sold. An owner claiming that a duplex has been converted to a single family residence has the burden of establishing that is so; otherwise each unit of a duplex is to be considered as a separate original property. C 6/13/90.

200.0063 **Original Property.** A mobilehome subject to the Motor Vehicle License Fee and located on land owned by the claimant does not qualify as original property for purposes of Revenue and Taxation Code section 69.5. "Original property" as used in section 69.5(e) requires that the property include the place of abode, that is, that the transfer of the place of abode must constitute either a change in ownership which subjects it to reappraisal either in accordance with Revenue and Taxation Code section 110.1 or Revenue and Taxation Code section 5803, or result in a base year value determined in accord with section 69.5. C 3/23/89; C 6/26/91. (M99-1).

200.0064 **Original Property.** In making the value comparison between an original property and a replacement property, the value of structures on the original property other than the principal place of residence must be excluded. C 9/6/94.

200.0066 **Original Property.** Revenue and Taxation Code section 69.5(e) requires the assessor, upon the sale of original property, to determine a new base year value for the property, and it provides that the section shall not apply unless

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PRINCIPAL RESIDENCE (Contd.)**

the transfer of the original property is a change in ownership that subjects the property to reappraisal at its current fair market value in accordance with Revenue and Taxation Code section 110.1. Conversely, there is no provision for the sale of a partial interest in an original property. C10/7/97. (M99-1).

200.0067 Original Property. The sale of the entire original property in increments would qualify for the base year value transfer relief provided under Revenue and Taxation Code section 69.5 if all the sales take place within two years of the acquisition of the replacement property. For the purpose of value comparison, the full cash value of the original property would be determined by adding the fair market value of each interest sold as of its date of sale. C 6/28/2000. (2002-1).

200.0068 Original Property. A man and a woman, each of whom owns a home and each of whom is otherwise eligible for Proposition 60 relief, marry. The wife rents out her house and moves into her husband's home. They intend to purchase another home and use the wife's house as a qualifying original property for transfer of base year value purposes. If they are unable to purchase a qualifying replacement property before the lapse of two years from the date the wife ceased to occupy her home, the wife must re-occupy her home as her principal residence to again establish it as a qualifying original property. She would have to present sufficient evidence to qualify the home for the homeowner's exemption for a period ending within two years of the purchase of the replacement dwelling. C 9/6/2001. (2003-1).

200.0075 Owner. For purposes of applying the benefits of Revenue and Taxation Code Section 69.5, the term "owner" includes the life beneficiary of two trusts, one of which is revocable and the other of which is irrevocable. While a trustor may be the owner of property held in a revocable trust, the life tenant residing in the property qualifies as an equitable owner of the interest in the property held in the irrevocable trust. C 12/20/89.

200.0076 Owner. A minor may own real property or an interest therein, but may not convey or make contracts relating to real property. Therefore, a minor may not directly qualify for the transfer of base year value treatment of Revenue and Taxation Code section 69.5. However, a minor may obtain the benefit of that section indirectly through a guardianship or trust. In order to do so, the minor must be a beneficial owner of both the original property and the replacement property. C 11/12/99. (2001-1).

200.0077 Owner. Since a life tenant holds the dominant or primary interest that is substantially equal to the value of the fee interest, an owner of a life estate can be an "owner" for purposes of the homeowners' exemption under Revenue and Taxation Code section 218. Thus, upon meeting the other requirements of section 69.5, the owner of a life estate may qualify for a base year value transfer. C 12/18/2006. (2007-1).

200.0080 Partner in Partnership. While there are similarities in the requirements for qualifying for the homeowners' exemption and for the transfer

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PRINCIPAL RESIDENCE (Contd.)**

of a base year value to a replacement property, there is also the difference that a partner may obtain an exemption on a dwelling held in the name of a partnership of which he or she is a member but cannot transfer a base year value to a replacement dwelling owned by a partnership.

The provisions of the Revenue and Taxation Code apply an aggregate theory to partnerships, i.e., the partnership is not viewed as an entity separate and apart from the partners. However, when concerned with the exclusion from change in ownership, the code clearly employs a separate entity theory. C 12/15/89.

200.0081 Property Held in Trust. An individual holding a residence in trust should be considered the claimant for purposes of Revenue and Taxation Code section 69.5 and should receive the base year value transfer benefit of the section, assuming all of the requirements of the section are met. C 1/22/99. (M99-2).

200.0084 Proposition 90 Ordinances. A local ordinance containing language which is not in conflict with Revenue and Taxation Code section 69.5 or section 2 of article XIII A of the California Constitution and which allows for the transfer of a base year value in a specific instance, not otherwise addressed in the statute or Constitution, should be followed by the assessor. C 12/18/95. (M99-1).

200.0086 Purchase. To qualify for the Revenue and Taxation Code section 69.5 transfer of a base year value to a replacement dwelling, several requirements, including the requirement that the replacement property must be purchased, must be satisfied. Obtaining an 8 percent ownership interest in a property as a beneficiary of a trust prevents using the property as a replacement, even if the remaining 92 percent interest is obtained by purchase. Reason indicates that there must be an instance in which a gifted interest is so small that it should be ignored. Lacking such de minimis standard in section 69.5, the application of the less than 5 percent of the total value and less than \$10,000 limitation of Revenue and Taxation Code section 65.1 provides a reasonable standard. C 3/30/90; C 1/28/2000. (Am. 2000-2).

200.0087 Purchase. A property obtained by way of a gift, including an inheritance, is not purchased and therefore, does not satisfy the requirements of Revenue and Taxation Code section 69.5 which allows for the transfer of a base year value of a sold property to a purchased or constructed replacement dwelling. C 3/18/88; C 10/20/89; C 11/24/99. (Am. 2000-2).

200.0088 Purchase. Since Revenue and Taxation Code section 63 provides that change in ownership does not include transfers between spouses, the transfer of a base year value from one property to another is not available to a person who obtains the "replacement property" or an interest in such a property from a spouse. Revenue and Taxation Code section 69.5 limits the transfer of value to replacement dwellings that are purchased, which pursuant to section 63 does not include transfers between spouses. C 4/8/88; C 7/15/97. (Am. M99-1).

200.0089 Purchase. If A and B divorce and sell their former home, neither may transfer the base year value of that property to a property owned by a new spouse.

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PRINCIPAL RESIDENCE (Contd.)**

Should the new spouse grant A or B an ownership interest in the second property, and assuming all other requirements of Revenue and Taxation Code Section 69.5 are met, the divorced spouse grantee would not qualify as a purchaser. C 1/22/88.

200.0090 **Purchase.** The building of a new home on the front portion of a property because the old residence is not economical to repair would not qualify the new home as a replacement property. Revenue and Taxation Code Section 69.5 contemplates a sale of land and structure and the obtaining of different property of equal or lesser value. There would also be the disqualifier that the new home would undoubtedly be more valuable than the old. C 12/22/87.

200.0091 **Purchase.** In 1979 A transferred a one-half interest in his personal residence to B as a tenant in common. Subsequently, A and B bought a separate property as tenants in common. In 1990 A and B traded interests in the properties so that A again owned 100 percent of his residence and B owned 100 percent of the other property. The re-transfer of the interest A originally owned back to him does not qualify for Revenue and Taxation Code Section 69.5 relief. A had only one principal place of residence throughout, and it was never replaced, even though interests in it were transferred. C 9/24/91.

200.0092 **Purchase.** In determining whether a replacement property has been purchased within two years of the sale of the original property, the timing of purchases of partial interests must be taken into account. If a partial interest was obtained outside the two year period, Revenue and Taxation Code section 69.5 is inapplicable. C 9/6/94; C 11/24/99. (Am. 2000–2).

200.0093 **Purchase.** The purchase of a fractional interest in land owned by others followed by construction of a principal residence (“Granny dwelling”) does not qualify as the purchase of a replacement property, as is required to obtain the benefit of Revenue and Taxation Code section 69.5. However, the rental for 35 years or more or an outright purchase of the portion of the land on which the improvement is to be placed would qualify as the purchase and construction of a replacement property, with the value of both the land and improvement being considered for value comparison purposes. C 4/19/93. (M99–1).

200.0094 **Purchase.** To obtain the benefit of Revenue and Taxation Code section 69.5, a person must purchase the land and improvement intended as a replacement dwelling or must purchase with others such land and improvement within two years of the sale of the dwelling being replaced. The purchase of a partial interest in the land and improvement of another does not qualify the land and improvement as a replacement property. C 11/6/97. (M99–1).

200.0095 **Purchase.** Mr. and Mrs. J sold their large parcel and house to Z Construction Company. Z Construction subdivided this parcel and another parcel into five lots. Mr. and Mrs. J contracted to purchase one of these lots and to have Z Construction construct a house for them on that lot. The transfer of real property from Mr. and Mrs. J to Z Construction was a change in ownership under Revenue and Taxation Code section 60, since Mr. and Mrs. J had no ownership

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interest in Z Construction and there was no applicable exclusion. Similarly, the transfer of the subdivided lot from Z Construction to Mr. and Mrs. J was a change in ownership.

The fact that the subdivided lot was formerly a part of the large parcel owned by Mr. and Mrs. J did not make Z Construction a “holding company” pursuant to Property Tax Rule 462.200. There was nothing in the two parcel maps, the two settlement statements, and the two contracts pertaining to the transfers that indicates that anything less than the full fee interests transferred. Thus, each of the transfers qualified as a “sale” and a “purchase” for purposes of Revenue and Taxation Code section 69.5, and that exclusion was available if all the other requirements of section 69.5 were met. C 6/5/2001. (2003-1).

200.0099 Replacement Dwelling’s New Base Year Value. As used in Revenue and Taxation Code section 69.5(g)(6), “. . . and after the purchase or the completion of new construction” means that the full cash value of the replacement dwelling is the full cash value determined immediately after the purchase of the replacement dwelling. C 3/15/94.

200.0111 Replacement Property. A person 55 years of age or older who sells a single family property occupied as his/her principal residence may purchase a duplex as a replacement dwelling and have the base year value of the former transferred to his/her portion of the duplex.

In determining whether or not the base year value may be transferred, all of the requirements of Revenue and Taxation Code Section 69.5 must be satisfied. The value equivalency requirement is satisfied if the value of the portion of the duplex occupied as a principal residence is equal to or less than the value of the original residence. The remainder of the duplex would be appraised at its full cash value as of the date it sold, and that value would become the new base year value for that portion of the duplex.

The transfer of a base year value from a duplex or other multi-unit structure to a single family dwelling may also occur, provided all of the Section 69.5 requirements are met. C 10/10/88.

200.0112 Replacement Property. A condominium purchased by a person over the age of 55 to replace a personal residence upon which a homeowners’ exemption has been received is eligible as a replacement dwelling to which the base year value of the former residence may be transferred, provided all statutory requirements are satisfied.

The fact that the purchaser agrees to purchase the condominium subject to a “Shared Appreciation Agreement” is immaterial, so long as the purchaser obtains the full fee interest in the property. The seller’s contingent right to a future payment is not an interest in real property. The obligation to make a future payment may be considered in determining the full cash value of the condominium. C 8/9/91.

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200.0113 Replacement Property. Property eligible for the homeowners' exemption which is sold but reposessed within eighteen months and once again occupied by the seller as his or her principal place of residence qualifies as a replacement property for purposes of Revenue and Taxation Code section 69.5. C 9/18/92.

200.0115 Replacement Property. A dwelling purchased or newly constructed prior to November 6, 1986 does not qualify as a replacement dwelling for purposes of Revenue and Taxation Code section 69.5. If, subsequent to this November 6th date, the owner sells the property and repurchases it a month later, it should still be so considered. The sale and repurchase would appear to be a sham.

There is, however, nothing in the statutes to prevent a person from purchasing one or more replacement dwellings in a series and having any one of them qualify as a replacement dwelling for purposes of Section 69.5, provided they are bona fide purchases. C 10/7/87.

200.0116 Replacement Property-Lease. In order to qualify for a transfer of base year value pursuant to Revenue and Taxation Code section 69.5 where the date the replacement dwelling is purchased is the latest date (subdivision (h)(1)), a claimant must file a claim within three years of the date of purchase of the replacement dwelling and must own and occupy the replacement dwelling, thereby making it eligible for the homeowners' exemption, at the time the claim is filed. Thus, if a claimant rents out the entire replacement dwelling for two years after purchase, then occupies it as his principal residence and timely files a claim, the property would qualify for a transfer of base year value pursuant to section 69.5, assuming all other requirements are met. If timely filed, the claim would be effective from the date of the purchase of the replacement dwelling. C 4/3/2001. (2002–1).

200.0117 Replacement Property-Rescission. If the purchase of a replacement property is rescinded, the purchase of a second replacement property can qualify for the transfer of the base year value of the dwelling being replaced as provided in Revenue and Taxation Code section 69.5. The procedure for rescinding the original claim for transfer of base year value in section 69.5(i) must be followed, and the second purchase must be timely, i.e., within two years of the sale of the original property. C 9/20/94; C 11/6/97. (M99–1).

200.0118 Replacement Property. In order to satisfy the requirement of Revenue and Taxation Code section 69.5(g)(5)(B) that the replacement dwelling be "purchased . . . within the first year following the date of the sale of the original property", the following three events must occur at least one day after the recordation of the deed to the original property:

- (a) recordation of the deed to the replacement property;
- (b) satisfaction of all escrow instructions relating to the replacement property;
- and

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(c) the replacement property sales contract becomes specifically enforceable. C 9/1/87; C 8/19/87.

200.0119 Replacement Property. A taxpayer has purchased a condominium to replace his principal residence and plans to purchase an adjacent condominium and then commence construction to merge the two units into one. In order for the merged unit to qualify as a replacement dwelling under Revenue and Taxation Code section 69.5, the purchase of both units must occur within two years of the sale of the original property, and the new construction converting the units to a single, merged unit which is eligible for the homeowners' exemption must be completed within two years after the sale of the original property. C 3/23/2001. (2002-1).

200.0120 Replacement Property. Taxpayer proposes to purchase an 80-acre parcel, subdivide it into four 20-acre lots, sell 3 lots, build a home on the 4th lot, sell his original property, and transfer the base year value of the original property to the one lot and house, within the two year period. The value of the 80 acres plus the new construction would exceed the value of the original property. Thus, the equal or lesser value requirement of Revenue and Taxation Code section 69.5(g)(5) would not be met.

If, at the time of completion of construction and filing a claim for transfer of base year value, the taxpayer had already subdivided the 80-acre parcel into four 20-acre lots and sold 3 of the lots within the two year period required by section 69.5, the equal or lesser value requirement of section 69.5(g)(5) would be met if the value of the replacement dwelling plus the value of the 20-acre lot did not exceed the value of the original property. In that event, the base year value of the original property could be transferred to the 20-acre lot and house. C 11/21/2000. (2004-1).

200.0121 Replacement Property. Taxpayer purchased two separate adjoining parcels, one of which included a residence. The base year value of the taxpayer's original property was transferred to the qualifying residence and parcel. Taxpayer would like to combine the two parcels into one parcel in order to have the benefits of Revenue and Taxation Code section 69.5 apply to both parcels. The combination of the two parcels must be completed within two years of the sale of the original property in order for the second parcel to be considered part of the replacement property. C 3/4/2004. (2005-1).

200.0123 Rescission. Section 69.5(i)(1) permits a property owner to rescind a claim to transfer the base year value. However, a notice of rescission is only effective if it is filed within either of the two time periods contained in subdivision (i)(2). Under subdivision (i)(2)(A), the notice of rescission must be delivered to the assessor's office before the date the county first issues a refund check or before any property taxes are paid or become delinquent on the new transferred base year value. Alternatively, under subdivision (i)(2)(B), the notice of rescission is effective if it is delivered to the assessor's office within six years after the base year value transfer relief was granted, provided that the

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replacement property had been vacated as the claimant's principal place of residence within 90 days after the original claim was filed. C 5/31/2007. (2008–1).

200.0125 **Sale.** Revenue and Taxation Code section 69.5(g)(8) defines “sale” as “any change in ownership of the original property for consideration.” If a husband and wife own equal interests in an original property and “sell” it to their wholly-owned limited liability company in which they have equal interests, the property will be excluded from change in ownership under Revenue and Taxation Code section 62(a)(2). Thus, the property will not qualify for a base year value transfer under section 69.5, which requires the original property to be reappraised upon the sale. However, if the same husband and wife “sell” their original property to a limited liability company in which they and a third party have

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interests, the property will not be excluded from change in ownership under section 62(a)(2) or any other provision. Under those circumstances, the home will qualify for a base year value transfer under section 69.5, since the original property will be reappraised upon the "sale." C 12/31/2002. (2004-1).

200.0129 Time Limits. Section 2(a) of article XIII A of the California Constitution and Revenue and Taxation Code section 69.5 require that a replacement dwelling be purchased or newly constructed within two years of the sale of the original property. This two-year period is mandatory, and neither article XIII A nor section 69.5 provides for an extension of this two-year period. C 12/18/2006. (2007-1).

200.0130 Timing. The property tax relief granted by Revenue and Taxation Code Section 69.5 is available in differing degrees depending on when the replacement property is purchased. If the replacement property is purchased prior to the sale date of the original property, the former must be of equal or lesser value to qualify for relief. The sale date of each property is rebuttably presumed (Property Tax Rule 462(n)) to be the date each deed was recorded. The presumption may be overcome by a factual showing that on some earlier date all escrow conditions had been fulfilled so that either party could obtain judicial enforcement of the agreement. C 8/29/90.

200.0300(b) GOVERNMENT ACQUISITION

200.0310 Calculation. If a four-unit residential-income property (owner resided in one unit) with an adjusted base year value of \$160,000 is sold to a governmental entity for \$200,000 and the seller purchases a replacement dwelling for \$195,000, the adjusted base year value of the acquired property would be \$40,000 plus the amount by which the full cash value of the acquired property exceeds 120 percent of the full cash value of the property from which the person was displaced, i.e., 120 percent of \$50,000 or \$60,000. The \$135,000 difference between \$60,000 and the new dwelling purchase price of \$195,000 would be added to the \$40,000 to provide a replacement property adjusted base year value of \$175,000.

Should the displaced owner purchase an income producing multi-family residential property of at least three units, the same analysis would apply, but three-fourths of the replacement purchase price and three-fourths of the adjusted base year value of the fourplex would be used in the calculation. C 5/3/88.

200.0315 Claim. The filing requirements of Revenue and Taxation Code Section 68 are mandatory. A failure to timely file a request for a transfer of the assessed value of a property taken by governmental action to a replacement property is jurisdictional and prevents the value transfer. C 12/22/88.

200.0316 Claim. A failure to file a timely claim for transfer of value from a property taken by governmental action to a replacement property prevents transfer of the assessed value of the replaced property and the refund of any difference in taxes paid on the replacement property. The time limitation of

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Revenue and Taxation Code Section 68 is not a statute of limitation within which a right must be enforced and cannot be waived. The limitation is one that if not met prevents the right of transfer from arising. Without a right, no tax overpayment occurs and no refund is possible. C 12/22/88.

200.0317 **Claim.** The time period for requesting a transfer of assessed value from a property taken by eminent domain to a replacement property is the later of four years from the date the owner vacates the taken property or the date the final date of condemnation is recorded. More than one property may qualify as a replacement if the property taken was put to multiple uses e.g., commercial and residential.

If more than one replacement property is purchased, the value of both will be considered in determining whether their value exceeds 120 percent of the amount paid for the taken property. When the amount paid by the taking governmental agency is augmented by a court award, the total amount received by the former owner is used when applying the 120 percent test. If replacement property is purchased prior to the determination of the total award and is assessed as exceeding the 120 percent limitation, it should be revalued and a refund made, if appropriate. C 9/30/87. (Am. 2000-2).

200.0320 **Disaster.** In a situation in which a home is destroyed by a landslide and is declared by a local government to be unfit and unsafe for human habitation, assessment reduction is not available under Revenue and Taxation Code section 68, which conditions relief thereunder upon displacement by eminent domain proceedings, acquisition by a public entity, or governmental action which has resulted in a judgment of inverse condemnation.

Assessment reduction may be appropriate under Revenue and Taxation Code sections 70 or 170 and, after July 1, 1985, under Revenue and Taxation Code section 69. C 3/18/86. (Am. M99-1).

200.0328 **Exchange.** Following a court judgment finding inverse condemnation, the city exchanged other land for the condemned property as part of a comprehensive agreement involving various properties. In order to determine the base year value of the replacement property in such a property exchange situation, the assessor is correct in making an independent estimate of market value in order to compare both the replaced and replacement properties to determine if the full cash value of the replacement property is no more than 120 percent of the full cash value of the replaced property. C 6/15/2001. (2002-1).

200.0330 **Government Purpose.** Acquisition of property by a public retirement system for investment purposes results in comparable replacement property being excluded from change in ownership under section 2(d) of article XIII A of the California Constitution and Revenue and Taxation Code Section 68 where all other conditions for exclusion are met. Whether property is acquired for governmental purposes or for proprietary purposes is not determinative. C 2/6/84.

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- 200.0343 **New Construction.** Replacement improvements placed on land after the transfer of base year value may qualify for the exclusion if they satisfy all the requirements of Revenue and Taxation Code section 68 and Property Tax Rule 462.500. Any construction necessary to make the replacement property comparable to the property replaced must be completed within the four-year period within which the request for assessment must be made. C 6/11/99. (2001-1).
- 200.0350 **Proceedings.** The threat of an eminent domain taking by a non-governmental agency is not a sufficient basis for transferring the base year value of the subject property to a replacement property under Revenue and Taxation Code section 68. The taking must occur as a result of eminent domain proceedings that are concluded by a stipulated or court formulated judgment. C 1/25/87.
- 200.0352 **Replacement Property.** A property used for residential and commercial purposes which is taken by governmental action may be replaced by separate properties, one used for residential purposes and the other for commercial purposes. The person purchasing a replacement property need not be the sole owner thereof to obtain tax relief pursuant to Revenue and Taxation Code Section 68. If all other requirements are satisfied, the owner of an undivided interest may obtain the benefit of the section. C 5/22/87.
- 200.0354 **Replacement Property.** If a governmental agency purchases a two acre parcel of land, removes the existing improvements, subdivides the two acres into two one acre parcels, builds an improvement requested by the original owner and then sells the one acre and the new improvement to the former owner, the resold portion would qualify as a replacement property referred to in Property Tax Rule 462.5. C 12/18/89.
- 200.0356 **Replacement Property.** Replacement land acquired to replace land taken by governmental action or eminent domain is excluded from change in ownership under Revenue and Taxation Code section 68 and Property Tax rule 462.5 if it is comparable to the land taken, even though the land taken had a building thereon. The exclusion is available only to the owner or owners of the property taken, however. Thus, if the land taken were owned by a partnership, the replacement land would have to be acquired by the partnership, not by the individual partners as tenants in common; but the exclusion would be available to the partnership to the extent of its interest in the replacement land, whether 100 percent or less than 100 percent. C 4/27/88.
- 200.0357 **Replacement Property.** Property Tax rule 462.5 requires ownership both of “replaced property” and of “replacement property” in order for the full exclusion from change in ownership provided by section 2(d) of article XIII A of the California Constitution, Revenue and Taxation Code section 68, and the rule to be available. Thus, only improvements on replacement property consisting of a fee interest in improvements and a ground lease in excess of 35 years qualify for the transfer of the taxable value from the replaced property. While a lease of

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taxable real property for a term of 35 years or more is a change in ownership for purposes of reassessment, such a lease does not convey ownership of the property under real property law. C 1/7/94.

200.0358 Replacement Property. Holding agreements involving the transfer of real property to a strawman under Internal Revenue Code section 1033 generally do not constitute changes in ownership, there being no transfer of any equitable or beneficial interest in the property. Thus, the acquisition of a replacement property by any person displaced from property through eminent domain proceedings, when title of the replacement property is acquired indirectly through a holding company does not disqualify that person from the benefits of the Revenue and Taxation Code section 68 exclusion. C 10/26/93. (M99-2).

200.0359 Replacement Property. The pro-rata base year value of a fourplex used as the primary residence of its owner may be transferred to a single family residence purchased as a replacement property. If two couples own the fourplex, and each couple resides in a unit and has received a homeowners' exemption for its unit, each couple may transfer its pro-rata base year value of the fourplex to separate, single family residences acquired as replacement properties for such single family residential use. C 2/29/2000. (2001-1).

200.0360 Replacement Property—Comparable in Function. Replacement property is comparable to the condemned property, if it is similar in function, that is, subject to similar zoning or general plan restrictions, or if "it is intended to be used" in the same manner, even though its actual use is out of compliance with such restrictions. The standard for determining whether there is comparability in function under Rule 462.5(c)(1) is the similarity of the government restrictions, not actual use. C 1/27/95; C 7/31/96. (M99-1).

| **200.0361 Replacement Property—Comparable in Function and Utility.** Although the future zoning restrictions on, and the future uses of, the replacement property will change and be different from those of the replaced property, the properties are comparable if, at the time of the sale or exchange, the replaced and replacement properties had similar zoning restrictions and the taxpayer's actual and intended uses of the properties were similar. C 6/15/2001. (2003-1).

200.0365 Replacement Property—Date of Acquisition. As provided in Property Tax Rule 462.500, property purchased to replace property acquired by a governmental entity is not eligible for the exclusion provided by Revenue and Taxation Code section 68 if it was acquired prior to: (1) the date of the initial written offer for the replaced property; or (2) the date the acquiring entity took final action to approve a project which resulted in an offer for or the acquisition of the replaced property; or (3) the date as declared by the court that the replaced property was taken. However, replacement improvements placed on land after these dates may qualify for the exclusion if they satisfy the requirements of comparability and ownership, even though the land on which the improvement is placed is ineligible for the exclusion. If such improvements qualify, the entire base year value of the property taken (land and improvements) may be

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transferred to a replacement property consisting of only improvements. Subdivision (d) of Rule 462.500 does not prohibit or restrict the reallocation of base year value when a replacement property consists of only newly constructed improvements. C 4/18/2003. (Am. 2000–1; 2004–1).

200.0366 **Replacement Property—Multiple Properties.** The condemned property was a leased automobile dealership on industrially zoned land. Taxpayer constructed five concrete tilt-up buildings, used commercially, on multiple sites that are zoned industrial. The combined full cash value of the multiple properties is less than 120 percent of the purchase price of the property taken. Thus, the base

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year value of the condemned property may be transferred to multiple replacement properties. Neither Revenue and Taxation Code section 68 nor Property Tax Rule 462.500 limits the availability of relief to a single replacement property. C 4/18/2003. (2004-1).

200.0368 Sale and Leaseback. Property Tax Rule 462.500(g)(2) provides that a request to transfer the base year value of a property acquired by a public entity to a replacement property shall be timely if it is made within four years of the date of conveyance or the date the taxpayer vacates the replaced property, whichever is later. The fact that the taken property was leased back to the former owners does not preclude the replacement property from qualifying. Remaining in possession of the property under the lease simply delays the onset of the four-year period within which the request to transfer the base year value to the replacement property must be made. C 10/2/2000. (2003-1).

200.0370 Threat of Condemnation. A sale directly to a private party under threat of condemnation by a governmental entity is not displacement from property by eminent domain proceedings, by acquisition by a public entity, or by governmental action which results in a judgment of inverse condemnation for purposes of Revenue and Taxation Code section 68 and Property Tax Rule 462.5. C 3/1/94. (Am. M98-2).

200.0385 Value to Transfer. If the property acquired by the public entity has an assessed value below its adjusted base year value due to a decline in its market value (Proposition 8 value), the Proposition 8 value cannot be transferred to the replacement property pursuant to Revenue and Taxation Code section 68. The adjusted base year value of the replacement property would be the lower of its fair market value or the value derived by the application of the alternate formula set forth in section 68. C 2/1/99. (2000-1).

200.0400(c) DISASTER RELIEF

See Disaster Relief

200.0402 Availability. The provisions of Revenue and Taxation Code Section 69 are designed to provide disaster relief by permitting the transfer of base year value when property is damaged or destroyed in an area declared by the Governor to be in a state of disaster. Damage to or destruction of individual property may well constitute a disaster to its owner; however, such loss is not eligible for Section 69 relief if the damage is not the result of a disaster declared by the Governor. C 9/21/89.

200.0420 New Construction—Additions. Where new construction is added to a replacement property after the owner has qualified for the transfer of a base year value from property damaged or destroyed by a disaster, as declared by the Governor, the value of the new construction may be added to the value of the replacement property that qualified for transfer of the base year value, provided

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that the entire transaction, including the new construction, meets the time and value limits set forth in Revenue and Taxation Code section 69. C 6/24/98. (M99–2).

200.0430 Replacement Property. Revenue and Taxation Code section 69 permits the base year value of property which is substantially damaged or destroyed by a disaster to be transferred to comparable property which is acquired or newly constructed as a replacement for the substantially damaged or destroyed property if the property is damaged by a major misfortune or calamity and located in an area declared to be in a state of disaster by the Governor; if the damaged property sustains physical damages amounting to more than 50 percent of its full cash value immediately prior to the disaster; if the replacement property is located in the same county as the damaged property and is acquired or newly constructed within two years after the disaster; if the replacement property is comparable to the damaged property in size, utility, and function; and if the buyer of the replacement property was the owner of the damaged property at the time of damage. When the base year value is transferred to the replacement property, the damaged property is reassessed at its current full cash value.

Only if the replacement property was acquired or newly constructed on or after July 1, 1985, can the adjusted base year value be transferred from damaged property to replacement property. “Property” means the appraisal unit as defined in Revenue and Taxation Code section 51(e), the unit people in the market typically buy and sell. Thus, if the \$200,000 full cash value of a residential property consisted of a land value of \$110,000 and an improvement value of \$90,000, and only the improvement was destroyed by a disaster, the owner could not transfer the base year value because the appraisal unit did not sustain damages amounting to more than 50 percent of its full cash value prior to the disaster. Finally, in the event the damaged property is reconstructed, that reconstruction is not eligible for property tax relief under section 70(c) but rather, it is deemed to be new construction. LTA 3/10/87 (No. 87/23). (Am. M99–1).

200.0431 Replacement Property. If the owner of a two story residence removes what is left of the second story after a fire and reconstructs and roofs the first story, assessment relief would be possible under Revenue and Taxation Code section 70 or section 170. If, however, a replacement residence is constructed, relief would not be available under these sections. After July 1, 1985, relief under Revenue and Taxation Code section 69 would be available for the new residence, providing all the requirements of the section were met. The context in which the terms “replacement” and “reconstruction” are used in the sections makes it clear that these terms are not intended to be synonymous. C 7/10/86. (Am. M99–1).

200.0450 Time Limitations. Revenue and Taxation Code section 69 does not prescribe a time limitations period within which a claim for transfer of a base year value must be filed. The five-year period prescribed by section 69 does not apply to claim filing but rather, is a qualifying requirement for the acquisition or new construction of replacement property. When a claim for transfer is filed, any relief

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for taxes paid is available only for those years not barred by the applicable statute of limitations for refund claims. C 11/2/2000. (2002–1).

200.0500(d) CONTAMINATED PROPERTY

See Newly Constructed Property

200.0520 Comparability. There are two separate property tax relief provisions in section 2(i) of article XIII A of the California Constitution and Revenue and Taxation Code section 69.4: one, a transfer of base year value if the owner of the contaminated property elects to sell or otherwise transfer the property; and the other, an exclusion from new construction if the owner elects to repair or reconstruct a substantially damaged or destroyed structure on the same contaminated property after the remediation of the environmental problems. The comparison tests are different for each provision. With respect to the transfer of base year value (section 2(i)(1)(A)), the replacement real property must have “a fair market value that is equal to or less than the fair market value of the qualified contaminated property if that property were not contaminated.” Sec. 2(i)(1)(A)(i). Under the exclusion from new construction, “the repaired or replacement structure [must be] similar in size, utility, and function to the original structure.” Sec. 2(i)(1)(B).

In this regard, the comparability test for the transfer of base year value set forth in section 2(i) is comparable to that set forth in section 2(a) of article XIII A and Revenue and Taxation Code section 69.5 with respect to transfers of base year values by persons over the age of 55 years (“dwelling of equal or lesser value”); and in section 2(e) of article XIII A and Revenue and Taxation Code section 69.3 with respect to property substantially destroyed by a disaster (“property of equal or lesser value”). Pursuant to those provisions, the claimant is ineligible for the exclusion if the value of the replacement property exceeds that of the original property, as defined by the Legislature. On the other hand, the comparability test for the repaired or replacement structure new construction exclusion is comparable to that set forth in section 2(d) of article XIII A and Revenue and Taxation Code section 68 with regard to property taken by eminent domain (“comparable property” “similar in size, utility, and function”), which the Legislature permits as a transferable value, with any value over and above that comparable value assessed at current market value. C 9/6/2000. (2002–1).

200.0560 Replacement Property. Property owner Z owns two lots across the street from each other. Before contamination was discovered, one lot was vacant, and the other had two structures, a single family residence and a garage with a living unit over it. Both structures were demolished due to the remediation. Z intends to build a retail store with a living unit over it on the lot that was formerly vacant. No base year value may be transferred to the vacant lot pursuant to section 2(i) of article XIII A of the California Constitution because both lots were owned by the same person and because the lot was not acquired within five years after the sale or transfer of the contaminated property. Neither will the new structure qualify for the new construction exclusion because the lot on which it is

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being built was vacant at the time of the remediation and thus, the new structure is not the repair or replacement of a damaged or destroyed structure on the qualified contaminated property. C 9/6/2000. (2002–1).

200.0580 **Value to Transfer.** The value that can be transferred from a contaminated property to a replacement property pursuant to section 2(i) of article XIII A of the California Constitution is the original factored base year value of the contaminated property, not its reduced assessed value based upon the reduction in fair market value due to the contamination. C 1/26/99. (2001–1).

BOARD OF EQUALIZATION

*See County Board of Equalization
State Board of Equalization*

205.0000 BUSINESS INVENTORY EXEMPTION

*See Aircraft
State-Assessed Property
Timber Yield Tax*

205.0010 **Agricultural Enterprises.** The following types of property are eligible for the exemption:

1. Farm commodities held in storage for future sale.
2. Seeds held by a farmer for planting to be used in the production of a crop grown primarily for sale.
3. Feed held by a farmer for feeding to animals that are subject to the livestock head-day in-lieu tax.
4. Commercially prepared by-products, such as sugar beet pulp, almond hulls, and cotton seed hulls, that are held by the farmer and used as feed for animals used in the production of food or fiber useful to man.
5. Mink and other commercially-raised, fur-bearing animals.
6. Farm animals held for breeding purposes if their offspring are normally used as food for human consumption or for the production of fiber useful to man.
7. Farm animals used to work the farm if they are used in the raising of crops which are held for sale, or for the feeding, breeding, or management of livestock.
8. Felled timber lying in the woods on the lien date.
9. Trout in trout farms.
10. Oysters being grown in oyster beds.
11. Bees.

The following types of property are ineligible:

1. Insecticides, fuel and fertilizer held by a farmer for use.
2. Farm equipment held for sale by the farmer as used equipment.
3. Unharvested fruit on the trees.

BUSINESS INVENTORY EXEMPTION (Contd.)

4. Seeds held by a farmer for planting in order to produce a crop that will be used as feed for eligible animals.
5. Strawberry plants held for planting by a grower to produce strawberries for sale.
6. Asparagus roots held for planting.
7. Medicine separately purchased for mixing in feed for eligible livestock.
8. Dogs and cats held as pets.
9. Stallions and mares held for the production of offspring.
10. Show horses and racehorses, except that show horses held for sale in the normal course of business of the owner are eligible.
11. Pack animals used by a guide to pack campers into the mountains, except that pack animals leased to campers, directly under their control, and not otherwise used by their owner are eligible.
12. Plants grown by nurseries for the production of cut flowers. LTA 4/25/80 (No. 80/69).

205.0015 Aircraft in Dealer's Inventory. Basically, the guidelines for exemption of aircraft are the same as for other properties, e.g., they must be held for either sale or lease as of the lien date.

Where a dealer is using an aircraft for pilot training or charter, Property Tax Rule 133 subdivision (b)(3) would exclude that aircraft from exemption. Additionally, Rule 133 subdivision (b)(5) and (6) would exclude from the exemption any aircraft held for lease that were used or were intended to be used for pilot training or charter. LTA 9/30/80 (No. 80/144).

205.0025 Animals. Although animals held for sale or lease or for food production are business inventory and entitled to exemption, those listed below continue to be taxable:

1. Rodeo stock and show horses used for commercial purposes.
2. Animals used in riding stable operations where the animals do not leave the stable operator's facility and remain under the control of the operator.
3. Animals used in pack station operations where control over the pack animals remains with the pack station operator.
4. Stallions or brood mares held for breeding purposes.
5. Any other animals not held for sale or lease; or not used in the production of food or fiber for human consumption; or not used in the feeding, breeding, or management of livestock.
6. Racehorses which continue to be taxed on the in-lieu basis of Revenue and Taxation Code Section 5721. LTA 3/25/80 (No. 80/54).

205.0030 Boat and Equipment Rentals. A boat held for lease by a resort and equipment held for lease by an equipment rental yard are business inventories. C 12/18/79.

BUSINESS INVENTORY EXEMPTION (Contd.)

205.0040 **Bulbs.** Daffodil, lily, and iris bulbs held and used to produce cut flowers are perennials which, if planted on the lien date, are part of the land, but which, if not planted on the lien date, are personal property ineligible for the exemption. C 2/10/83.

205.0044 **Demonstrations.** Demonstration equipment in the possession of a potential customer may be eligible for the business inventory exemption depending on the length of the demonstration period, whether that period conforms to the prevailing period in the industry, whether it exceeds the economic life of the equipment, whether the equipment has been used by the holder prior to the execution of a lease, whether the customer is obligated to pay for maintenance or repairs or is receiving compensation for using the equipment, and whether the equipment will be sold following its demonstration. C 10/29/96.

205.0045 **Demonstrators.** Equipment used as demonstrators by salesmen employed to sell new equipment of the same type is eligible for the exemption. Equipment used as demonstrators by salesmen employed to lease equipment is ineligible, however, since the law applicable to leasing transactions does not permit exemption if there is any use other than leasing. C 12/15/76.

205.0050 **Direct Billing.** Business inventory that was previously included in the direct billing estimate of value must be removed from the assessment for 1980 and thereafter, the business inventory is exempted. LTA 4/25/80. (No. 80/69).

205.0055 **Escaped Property.** The exemption applies to escaped property enrolled under Revenue and Taxation Code Sections 531.3 (failure to report cost accurately), 531.4 (inaccurate statement), and 531.5 (inaccurate information) for the 1975–76 through 1979–80 fiscal years, but it is denied to escapes to which the Section 504 (25 percent) penalty is applied.

An assessment pursuant to Revenue and Taxation Code Section 501 (failure to furnish information) along with the Revenue and Taxation Code Section 463 penalty (failure to file statement) is eligible for the exemption. The exemption is applied prior to addition of the ten percent penalty. LTA 4/25/80. (No. 80/69).

205.0058 **Forms Sold to Related Entities.** Standardized office forms owned by a hospital corporation which sells the majority of said forms to independent, but related, entities which serve as support agencies to the hospital corporation are, to the extent they are held for sale, eligible for the exemption. The lack of a profit motive, the fact that the sales are made to closely related entities, and the fact that, in the hands of the purchasers, the forms become office supplies do not serve as bases for disallowing the exemption. C 1/25/74. (M99–1).

205.0059 **Gas Cylinders.** Gas cylinders available for the sale of their contents are not eligible for the exemption because they are not intended for sale or lease in the ordinary course of business. Rather, the cylinders are merely being provided by distributors as returnable containers used to facilitate the sales of the contents. C 12/4/84. (Am. M99–1).

BUSINESS INVENTORY EXEMPTION (Contd.)

205.0060 Gas in Storage. Gas once extracted and held in storage, even if stored underground, is personal property eligible for the exemption if held for sale or lease in the ordinary course of business. C 4/16/80.

205.0061 Gas in Storage. Gas stored underground and used in the course of recovery of oil is not eligible for the exemption. C 7/23/84. (M99–1).

205.0062 Hospital Property. Hospital-owned properties such as foods held for sale in the hospital cafeteria and drugs held for sale in the hospital pharmacy are eligible for exemption, while properties such as foods for patients' meals, patients' drugs, sutures, bandages, tape, splints, gauze, slings, dressings, needles, syringes, etc. are not. The latter items are transferred to patients in the course of rendering professional services and are regarded as self-consumed supplies. C 10/20/88.

205.0065 Linen Rentals. Typically, a contract for linen service specifies an initial quantity of linens to be delivered to the customer-lessee and contains a schedule for exchange to enable the supplier to clean and recirculate linens that have been laundered. Usually, there is no contractual provision requiring the supplier to maintain a specific number of linens in reserve. The number is discretionary with the supplier.

The inventory exemption applies as follows:

- (1) Linens in the lessee's possession or those to which the lessee has a contractual right of control regardless of their location are not eligible for exemption because they are, in effect, out on lease.
- (2) Linens in the lessor's possession held for sale or lease, even if intended to be exchanged for those in a lessee's possession but which are not committed to a specific lessee, are eligible for exemption. LTA 9/27/91 (No. 91/68); C 9/5/95. (Am. M99–1).

205.0066 Linen Rentals. Fungible linens furnished pursuant to "requirements clause contracts" are eligible for the business inventory exemption while they are on the lessor's premises, even if they are bundled and scheduled for delivery. The lessor's premises includes its delivery vehicles if the contract requires the lessor to deliver linen supplies to the lessee's premises. C 10/23/97. (M99–1).

205.0070 Machinery and Equipment. Machinery and equipment used in conjunction with animals for the production of food, e.g., milking equipment, is not business inventory and, therefore, may not receive the exemption. C 12/10/79.

205.0075 Manufacturing. The following types of property are eligible for the exemption:

1. Manufacturing supplies, such as nuts, bolts, and screws that will be incorporated in a product that is to be sold.
2. Parts held by manufacturers so as to perform warranty service on products that sell, even though the parts are not sold outright.

BUSINESS INVENTORY EXEMPTION (Contd.)

3. Sand and gravel held by a licensed contractor for incorporation into a bridge or roadbed not for his own use.

4. Lumber held at a job site by a licensed contractor for incorporation into a building not for his own use.

5. Factory-built housing held for sale by the manufacturer if held for sale as individual sections of a building or if the manufacturer is a licensed contractor and assembles the sections at a building site and then sells the building.

The following types of property are ineligible:

1. Manufacturing supplies, such as drill bits, that are not physically incorporated into a product.

2. Catalytic materials which are not intentionally incorporated into a product.

3. Machinery and equipment held for use.

4. Dies, patterns, jigs, or tools held for use.

5. Unmined materials, such as iron ore. LTA 4/25/80 (No. 80/69).

205.0076 **Manufacturing.** Fuels stored at plant sites so that the plants can generate power on a continuous basis do not constitute business inventory even when the plants are used to generate electricity for sale. The fuel is consumed in the course of creating electrical energy and is not incorporated into the power being sold. C 9/28/89.

205.0077 **Manufacturing.** Tin deposited on the surface of glass during the manufacturing process to improve the weather- and stain-resistant qualities of the glass is eligible for exemption. C 9/16/93.

205.0082 **Mobile Radios.** Radio-telephone companies that provide radios to their customers may do so as part of providing a communication service and without a separate charge, may lease the radios at a fixed rate with communication service provided for a separate charge, or may sell the radios and separately bill for the communication service. To the extent radios in inventory are to be leased or sold rather than provided as part of the communication service and without a separate charge, they are eligible for exemption. C 5/12/80.

205.0085 **Music Compilation Compact Discs.** The taxpayer is a producer and distributor of music compilation compact discs (CDs). The taxpayer uses the CDs as storage media to digitally store a large customized collection of songs and jingles. When a client places an order, the taxpayer signs a licensing agreement for the selected CDs. The licensing agreement states a specified period of use and requires certain monthly payments. The taxpayer retains ownership of the CDs while they are in the hands of the client. As required by the licensing agreement, at the end of the specified period of use, the client must return the CDs to the taxpayer.

Since the CDs leased and delivered to the lessees constitute tangible personal property owned by the taxpayer, they are a part of the taxpayer's business inventory while in the hands of the taxpayer. Thus, they are eligible for the

BUSINESS INVENTORY EXEMPTION (Contd.)

exemption. Those CDs that are in the hands of clients on the lien date, however, are subject to property taxation. C 9/11/2000. (2003–1).

205.0090 Oil Well Tools and Equipment. To determine whether a given company is leasing oil well tools and equipment or providing a service that involves the use of tools and equipment, investigation must be made into the business practices of the company rather than placing reliance only on the contract forms employed.

Tools and equipment held for and leased without operators are eligible for exemption. Tools and equipment “rented” with operators are not. Here the owner is providing a service and using tools and/or equipment in the performance thereof. Tools and equipment held both for use in the performance of a service and for rental would be ineligible for exemption for failure to satisfy the “held exclusively for lease” requirement. C 4/15/88.

205.0100 Penalties.

1. (a) Revenue and Taxation Code Section 219 allows the exemption for escaped inventory enrolled under Revenue and Taxation Code Section 531, provided that the inventory should not be properly enrolled under other specific sections which disallow the exemption.
- (b) Section 531 should not be used for willful evasion of personal property taxation. Escapes of that nature should be enrolled under Revenue and Taxation Code Section 502.
- (c) If Revenue and Taxation Code Section 463 and Revenue and Taxation Code Section 504 penalties are to be applied, enrollment should be under Section 502, and the penalties will apply to the net amount after allowance for the exemption.
2. If a taxpayer with over \$30,000 inventory willfully under-reports feed and does not report feed stored at another location:
 - (a) The Section 504 penalty would only apply to the amount of feed that escaped, and enrollment should be under Revenue and Taxation Code Section 531.4 for the reported location.
 - (b) The feed stored at the second location should be handled as 1. (c), above. The Section 504 penalty applies.
 - (c) No exemption is allowed under Section 531.4, but the second location calls for penalties on the net amount.
3. If a taxpayer with over \$30,000 inventory at each of two locations receives and files a statement for only one of the locations:
 - (a) The escaped property at the second location should be enrolled under Section 531 with the ten percent penalty.
 - (b) No enrollment for the second location under Section 531.4 because no report was made for this property.
 - (c) If investigation indicated that the taxpayer willfully failed to disclose the second location, the procedure in 1. (a), above, should be used. C 2/25/80.

BUSINESS INVENTORY EXEMPTION (Contd.)

205.0110 **Personnel and Equipment.** Where a “lessor” provides his personnel to operate his equipment, he is providing a service rather than renting equipment, and the equipment would not be eligible for exemption even though the contract between the parties is denominated a “rental contract”. C 2/16/83.

205.0118 **Pheasants.** Pheasants owned, claimed or possessed by gaming clubs are not business inventory. The primary business of such clubs is to provide places to hunt, in conjunction with which the birds are raised and released into the fields, not to raise birds for resale or for sale. C 5/20/82.

205.0130 **Plants.** The exemption does not apply to plants not held for sale, whether annual or perennial. The harvested products thereof are, however, entitled to the exemption. The exemption is likewise applicable to nursery plants held for sale as living plants by nurseries, which plants are subject to taxation as personal property. OAG 11/7/74 (No. CV 74-68, Vol. 57, p. 506).

205.0140 **Printed Materials.** Maps, tour books, and similar published materials in the hands of an automobile association are business inventory even though they are provided to members without a specific charge being made therefor. C 8/8/80.

205.0141 **Printed Materials.** Medi-Cal Provider Claim Forms held by a fiscal intermediary that operates a claims processing system under a contract with the State are consumed in the course of the rendering of a service and are not held for sale to the State so as to qualify as exempt business inventories. The forms could qualify as exempt, state-owned property if appropriate and specific title clauses were included in the cost reimbursement provisions of the contract. C 7/7/89.

205.0160 **Professional and Service Enterprises.** Goods transferred in the rendition of a professional service are not eligible for the exemption, while goods transferred in the rendition of a nonprofessional service are eligible. A profession is a vocation where the labor and skill is predominantly mental or intellectual, rather than physical or manual. A profession requires knowledge of an advanced type in a given field of science or learning gained by a prolonged course of specialized instruction and study. Examples of professional services are: law, ministry, medicine, military service, engineering, chemistry, industrial designing, accountancy, and economics. A nonprofessional service is generally defined as a vocation requiring skill of a manual or mechanical nature. Examples of nonprofessional services are: barber, beauty operator, carpenter, plumber, electrician, and embalmer.

The following types of property are eligible for the exemption:

1. Embalming fluids of a mortician.
2. Medicines held by a hospital pharmacy for issuance to patients at a separate charge.
3. Food held for sale in a hospital cafeteria.
4. Clothes hangers and plastic bags held by dry cleaners and delivered to customers.

BUSINESS INVENTORY EXEMPTION (Contd.)

5. Chlorine tablets held by a swimming pool service company.
6. Auto repair shop inventories of replacement parts.
7. Television repairman's inventory of tubes and electrical parts.
8. Spare parts stocked by airlines and bus companies for use in repairing both their own equipment and equipment belonging to others if the owner segregates the portion of these inventories held for sale (used to repair the equipment of others).
9. Airline "frozen food stuffs" located at an off-site warehouse.

The following types of property are ineligible:

1. Medicines that a doctor keeps on hand.
2. Food held for serving to hospital patients as part of the daily hospital service and not separately billed.
3. A stock of accounting books passed on to the clients of an accountant as part of his services.
4. Parts that have already been installed as of the lien date on equipment being repaired by a repair shop.
5. Supplies of tickets held by airlines and theaters. LTA 4/25/80 (No. 80/69).

205.0161 Professional and Service Enterprises. Hospitals are service enterprises that consume rather than sell most of the items they dispense in the course of patient treatment and care. Such noninventory items include medicines, IV fluids, casts, splints, wraps, crutches, bone screws and all record keeping, cleaning and maintenance materials. The exception would be, for example, major items that are affixed to and/or permanently attached to patients, such as body part replacements or prostheses.

Portions of a hospital providing nonprofessional services such as the gift shop, cafeteria and pharmacy do transfer property to customers in the regular course of business, and such properties held for sale constitute business inventory. LTA 6/21/90 (No. 90/45).

205.0180 Property Held on Consignment for Sale. When a boat is consigned for sale, its eligibility for exemption depends on the true intent of the owner. Individual facts such as length of the consignment, inclusion of the lien date, and location of the boat tend to indicate the intent but are not singularly controlling. C 11/20/96.

205.0200 Property Held for Lease. When an equipment lease is terminated either because of the lessee's default or the expiration of the lease period, the equipment is eligible for the exemption even though it is located on the lessee's premises, assuming all exemption requirements are met. The statute does not require that the property be located at the lessor's place of business, only that it be held for lease in the regular course of business.

Should the assessor receive late notice of the lease termination after assessing the equipment to the lessor and the lessee, statutory provisions concerning roll

BUSINESS INVENTORY EXEMPTION (Contd.)

correction and/or cancellation should be implemented. Lease provisions concerning the tax responsibilities of the lessee are not binding on the assessor whose assessment authority is contained in Revenue and Taxation Code Section 405. C 3/20/89.

205.0201 Property Held for Lease. The following types of property are eligible for the exemption:

1. Goods held for lease not actually out on lease on the lien date, and not used by, or intended to be used by, the lessor for some purpose other than the prospective sale or lease of such goods.
2. Linen supplies that are leased to customers if not out on lease on the lien date.
3. Ski rental equipment held for short-term rentals if not out on lease on the lien date.
4. Coin-operated pool tables, shuffle boards, but only when held for sale or rent.
5. Items held for lease by a person who has himself leased the items from someone else.
6. Raw materials, work in process, or finished goods if they will become part of or are themselves items of personalty held for sale or lease.
7. Boats held for rental purposes in the normal course of business. This applies even though the boat rental activity may be suspended during the winter.
8. Horses held by a riding stable for rent on an hourly or daily basis, provided the horses are removed from the stable's place of business and are not directly under the owner's control during the rental period and provided the horses are not used by the owner when not rented.
9. Tools held by a short-term rental business if not out on lease on the lien date.
10. Cable television converters held for sale or lease by a cable company.
11. Supplies of motor fuels held by a rental operation where the fuels will be provided to a customer with the rental of a machine.

The following types of property are ineligible:

1. Vending machines held in the owner's hands that are normally placed on site to dispense food, unless the machines are held for rent.
2. Merry-go-rounds and other amusement rides.
3. Golf carts held for short-term rental.
4. Supplies of motor fuels held by an equipment operator where the fuels are consumed by the operator's equipment during the performance of a job. LTA 4/25/80 (No. 80/69); C 11/8/95.

205.0202 Property Held for Lease. While the location of leased property on the owner's real property may be an indication that property is not on lease, the crucial element for deciding whether property is actually out on lease is control of the property by the lessee. C 11/8/95.

BUSINESS INVENTORY EXEMPTION (Contd.)

205.0220 Property Leased on Lien Date. Whether or not property in the hands of a non-owner is actually being used on the lien date is not determinative of its status as exempt inventory or non-exempt property out on lease. If a person has the right to possession and control of property, that property is to be considered rented or leased, even if no user payments are currently due and even if the owner has some non-interfering rights in the property. C 4/1/85.

205.0240 Repair Parts. Parts used by a taxpayer to repair its property and to repair property of others, which it operates pursuant to agreements whereunder repairs, replacements, or modifications are at the taxpayer's sole cost and expense are used by the taxpayer in the course of its business and hence, are not eligible for the exemption. C 4/30/99. (2000-1).

205.0250 Retailing. The following types of property are eligible for the exemption:

1. Gold held by a dealer for sale in the ordinary course of business.
2. Merchandise in vending machines.
3. Consigned goods held for sale.
4. Farm or construction equipment, previously used by a farmer or contractor, under consignment to an auctioneer for sale.
5. Trading stamps in the hands of the trading stamp company.
6. Display items, unless they have been altered to the point where it is unlikely that they will be sold.
7. Returnable soft drink bottles or beer kegs held by the bottler when title to the bottles or kegs passes to the retailer.
8. Nonreturnable bottles and other containers if title thereto passes to the purchasers.
9. Salesmen's samples, if items are sold from the samples or if the samples are periodically rotated and returned to stock for sale.

The following types of property are ineligible:

1. Gold held by individuals or dealers as an investment in anticipation of price increases.
2. Merchandise from a discontinued business stored in a garage.
3. Merchandise from a discontinued business stored while the owner attempts to have the manufacturer accept return of the merchandise.
4. Farm or construction equipment held and advertised by a farmer or contractor for sale as a means of disposing of old or excess equipment.
5. Trading stamps held by a retailer for distribution with the sale of his goods.
6. Returnable soft drink bottles or beer kegs held by the bottler when title to the bottles or kegs remains with the bottler.
7. Office equipment that is removed from inventory and used by the retailer for a period of time. The equipment remains ineligible for the exemption until

BUSINESS INVENTORY EXEMPTION (Contd.)

such time as the retailer is no longer using the equipment and returns it to an inventory-for-sale status. LTA 4/25/80 (No. 80/69). (Am. 2001-1).

205.0270 Returnable Containers. Pallets and rigid delivery cases are not normally containers within the meaning of Property Tax Rule 133, since their primary use is to facilitate transportation and handling of groups of products rather than containment of products as the rule contemplates, but they can be. For example, pallets containing manufactured bricks sold to and consumed by bricklayers are the primary containers of the bricks, and such pallets are eligible for the exemption if title to the pallets passes to the bricklayers.

Title provisions in a written contract, cost or value of containers vis-a-vis deposit amounts, conditions of return of containers, inclusion of sales tax reimbursement on containers, distinctive marking or construction of containers, and the merchant's method of accounting, where applicable, should be considered when determining whether title to returnable containers passes to the purchaser of the product. LTA 5/10/83 (No. 83/59).

205.0290 State Assessee. Property held by a public utility also licensed as a contractor and participating in the construction of its facilities is not eligible for the exemption. Such construction activity is not in the ordinary course of the utility's business. Furthermore, such property which is to be incorporated into power plants, etc., is held for the utility's use, not for sale or lease. C 2/11/80.

205.0300 Subsidiary Sales to Parent Company. If a legitimate business purpose exists, separate corporate entities must be recognized as such, even though they may be related, sales by them may be made primarily or exclusively to related entities, and such sales may be at cost or without an intent to make a profit. Parts or finished goods held by a subsidiary corporation for sale to a parent corporation or to a related company are eligible for exemption. C 2/6/84.

205.0310 Subvention. In determining the yearly amount of the business inventory subvention payable to a redevelopment agency, the actual tax rate is to be used for the computation. OAG 7/26/83 (No. 83-301, Vol. 66, p. 231).

205.0315 Tomato Paste Bins. If title to tomato paste bins passes to the purchasers of the tomato paste in accordance with the provisions of Property Tax Rule 133(a)(1), then the bin or drum may be considered part of the container of the tomato paste and is eligible for the business inventory exemption. Rigid delivery cases can be considered containers eligible for exemption when the products that they hold, enclose or contain are placed on or in the rigid delivery cases at the time of manufacture and are not removed until the products are ready to be used or consumed by the purchaser. In shipping tomato paste, each foil bag is attached to or placed in a bin or drum prior to being filled with tomato paste, and the foil bag is not removed from its bin or drum until the tomato paste is ready to be utilized by the purchaser of the paste. C 10/25/2005. (2006-2).

205.0320 Trout Farms. Fish grown in a trout farm are properly classified as inventory, not as growing crops, because they cannot meet the test of growing crops as defined by California courts. C 3/1/78.

BUSINESS INVENTORY EXEMPTION (Contd.)

205.0340 **Video Cassettes.** Video cassettes held exclusively for sale or rent are eligible for the exemption. LTA 8/14/86 (No. 86/60).

207.0000 BUSINESS RECORDS

207.0005 **Data Processing Disc Packs.** The value of disc packs used in a consumer reporting business and containing credit data used to generate credit reports does not include the value of the credit data. C 10/10/79.

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C

210.0000 CALIFORNIA LAND CONSERVATION ACT

*See Farmland Security Zone
Land Use Restrictions
Open Space Lands*

210.0005 Alternative Use of Contract Property. A local government may not approve an alternative use of Williamson Act contract property which is not consistent with its current general plan under the “window” provisions of Chapter 1095 of the Statutes of 1981. OAG 6/5/84 (No. 83-1201, Vol. 67, p. 247).

210.0007 Annexation by City. A Williamson Act contract becomes null and void on the date the subject land is annexed to a city, provided that land is within one mile of the city’s border at the time the contract was executed, the city had its protest approved by the local agency formation commission, and the city states its intent not to succeed to any contract rights in its resolution of intent to annex. In such circumstances, cancellation fees would not be applicable. C 12/22/83.

210.0010 Local Agency Formation Commission Hearing on City’s Protest to Contract After Execution of Contract. Where a city, pursuant to Government Code Section 51243.5 has filed a protest to a Williamson Act contract, but the Local Agency Formation Commission does not hold a hearing on such protest before the execution of the contract by the board of supervisors, the Commission may still thereafter properly hold a hearing on and uphold the city’s protest.

The legal effect of the Local Agency Formation Commission upholding the city’s protest after the Williamson Act contract has been executed is the same as if it had been upheld before execution thereof. OAG 7/30/85 (No. 85-301, Vol. 68, p. 204).

210.0025 Public Agency. The purchase of property subject to a California Land Conservation Act contract by a public agency, if not by eminent domain or in lieu of eminent domain, does not cancel the contract. The property is subject to tax under section 11, article XIII of the California Constitution, if (1) the situs of the property acquired is outside the boundaries of the public agency, and (2) the property was taxable when it was acquired. C 10/25/2006. (2007–1).

210.0030 Valuation of Unrestricted Nonliving Improvements. Nonliving improvements should be treated as a separate appraisal unit (from the restricted land on which they are located) and enrolled at the lower of factored base year value or market value. C 4/4/94.

215.0000 CERTIFICATED AIRCRAFT

See Aircraft

215.0005 Air Taxi. An air taxi operator is an air carrier who directly engages in the air transportation of persons, property, or mail or any combination thereof. If the operator works under a plan which provides more or less regular service between two or more locations, then he qualifies as a “scheduled” air taxi operator. Otherwise, he is a “nonscheduled” operator. An operator’s registration

CERTIFICATED AIRCRAFT (Contd.)

certificate (CAB Form 298-A) will indicate the type of service he will perform and the F.A.A. registration number of each aircraft he intends using.

The following guidelines are recommended when assessing aircraft either owned or leased by air taxi operators:

1. Aircraft owned. Assess as an air taxi if the operator has listed the aircraft on the CAB Form 298-A or if a review of his records indicates any use of the aircraft for such purposes.

2. Aircraft leased. An air taxi operator may lease an aircraft for a continuous period, or he may have an arrangement with one or more aircraft owners to rent aircraft on a trip basis. Where the arrangement is other than on a trip basis, assess as if the aircraft is owned by the operator, even though the aircraft may be assessed to a nonoperator. If the arrangement is on a trip basis, look for repeated use of the aircraft for air taxi service. If an aircraft is used as an air taxi only once during a six-month period, assess as you would other comparable aircraft. However, if the operator's records indicate more than one use of the aircraft as an air taxi during a six-month period, assess as an air taxi. LTA 9/22/77 (No. 77/131).

215.0015 First Revenue Flight. Revenue and Taxation Code Section 1152a provides that all time prior to an aircraft's first entry into revenue service of the carrier in control of the aircraft is to be excluded. This exclusion applies only once per aircraft per carrier. LTA 2/8/83 (No. 83/17).

215.0020 Foreign-Owned Aircraft. Aircraft owned by foreign governments are exempt from personal property taxation by Revenue and Taxation Code section 5331. Aircraft owned, based and registered abroad and used exclusively in international commerce are exempt from property taxation (*Scandinavian Airlines System, Inc. v. Los Angeles County*, 56 Cal.2d 11, cert. denied, 368 U.S. 899). Since foreign carriers cannot engage in interstate commerce, no foreign aircraft are subject to property taxation. C 11/1/82; C 10/21/2002. (Am. 2004-1).

220.0000 CHANGE IN OWNERSHIP*

See Assessment

Base Year Value Transfer

Escape Assessments

Parent-Child Transfer

State-Assessed Property

* Property Tax Rule 462 was renumbered in May of 1994, effective June 10, 1994. Corresponding provisions are:

Rule 462(a).....	Rule 462.001
462(b).....	462.020
462(c).....	462.040
462(d).....	462.060
462(e).....	462.080
462(f).....	462.100

CHANGE IN OWNERSHIP (Contd.)

462(g).....	462.120
462(h).....	462.140
462(i).....	462.160
462(j).....	462.180
462(k).....	462.200
462(l).....	462.220
462(m).....	462.240
462(n).....	462.260

220.0001 **Adverse Possession.** Satisfaction of the five requirements for obtaining title to property by adverse possession constitutes a change in ownership as of the date all five are satisfied, even though title is confirmed subsequently by a court action. C 10/30/91.

220.0002 **Adverse Possession.** Any person claiming the right to be assessed for land may have his/her name placed on the regular assessment roll with that of the assessee, provided that supporting documentation listed in Revenue and Taxation Code section 610(b) is submitted to the assessor. C 12/9/98. (2000–1).

220.0004 **After-Acquired Title Doctrine.** The doctrine of after-acquired title applies in some circumstances where the deed purports to convey a greater title or estate in property than is actually owned by the grantor. When such a deed is recorded, only the interest actually owned undergoes a change in ownership and is subject to reassessment, unless an exclusion applies. C 11/7/2006. (2008–1).

220.0005 **Agent/Principal Relationship.** The question of whether the person whose name appears on a deed is the true owner of the property is a question of fact. Normally, the person whose name appears on the deed would be presumed to be the owner of the property in question. However, if one could prove that that person is merely acting as an agent of another, then the true owner of the property would be the agent's principal. Therefore, a transfer of the property from the agent's name to his principal would not be regarded as a change in ownership. C 7/11/80.

220.0010 **Air Rights.** A change in ownership of real property occurs pursuant to Revenue and Taxation Code section 60 upon the transfer of air rights located directly above the land surface which establishes their legal description. Air rights are considered real property by Property Tax Rule 124, which classifies them as land; a transfer of a present fee interest in air rights separate from the surface rights is legally possible since such rights are real property and part of land; and there should be a reappraisal of that portion of the land (air rights) that changes ownership. LTA 7/3/86 (No. 86/50).

220.0025 **Bankruptcy.** Although the filing of a petition for bankruptcy under United States Bankruptcy Code Chapters 7, 11 or 13 creates a separate and distinct estate, the estate of the bankrupt, beneficial use of a bankrupt's assets is not transferred and thus, no change in ownership occurs upon the creation of the estate. LTA 7/26/88 (No. 88/55).

CHANGE IN OWNERSHIP (Contd.)

- 220.0030 **California Department of Veteran Affairs.** When property is sold to a veteran by the Department of Veterans Affairs, the Department holds legal title as security for the payment of the purchase price, but beneficial title is in the veteran and the property is subject to property tax. If the veteran breeches the contract and the property is repossessed by the Department, there is a change in ownership but the property becomes exempt. C 2/27/85.
- 220.0031 **California Department of Veterans Affairs.** A purchase by the Department of Veterans Affairs of residential property for sale to a veteran creates a situation that is analogous to a transfer to a trust for the benefit of the purchasing veteran. The Department takes legal title to the property only to secure payment of the purchase price. When the person(s) selling the property to the Department is the parent(s) of the purchaser of the property from the Department, the parent-child exclusion is available, provided the transfers are completed on or after November 6, 1986, and all other requirements for the exclusion are met. C 9/19/88. (M99–1).
- 220.0033 **Change in Control on Date of Death of Beneficiary.** Where a trust owns voting shares in a corporation and the death of one beneficiary causes a stock transfer that results in another beneficiary acquiring more than 50 percent of the voting shares, the change in control occurs as of the date of death. C 11/20/95. (2000–1).
- 220.0035 **Charitable Gift Annuity.** A change in ownership of real property occurs pursuant to Revenue and Taxation Code section 60 upon the transfer of real property to a charity in exchange for a charitable contribution deduction for the value of the property's remainder interest and a stream of income from an annuity. Although the economic consequences to the donors of such property may be the same as those resulting from transfers to charitable remainder trusts, Revenue and Taxation Code section 62(d) only excludes from reappraisal transfers to trusts. C 6/4/87.
- 220.0040 **Community Property.** Control and ownership of legal entities acquired as community property by husbands and wives should be treated in the same manner as acquisitions whereby husbands and wives take title as joint tenants, namely, as one-half interests owned and controlled by the husbands and as one-half interests owned and controlled by the wives. The fact of marriage cannot be used to attribute ownership of one spouse to that of the other so as to find that one spouse has directly and indirectly acquired more than 50 percent ownership in a legal entity. Thus, no single person has acquired control within the meaning of Revenue and Taxation Code section 64(c), and such transactions are excluded from reappraisal by section 64(a). LTA 3/5/85 (No. 85/33); C 5/20/96; C 4/1/99; C 9/16/99. (Am. M99–1; 2000–1; 2000–2).
- 220.0041 **Community Property.** If a husband or wife owns as separate property a 49 percent ownership in a legal entity, and his or her spouse purchases a 5 percent interest with community property funds, a change in ownership of all property owned by the legal entity would occur since the original owner would obtain direct or indirect ownership of more than 50 percent of the total interests in the entity. C 4/12/88.

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220.0042 **Community Property.** If a married couple owning a joint tenancy interest in real property wishes to transfer that interest to an entity in which one of them has an ownership interest, the couple may avoid reappraisal by converting the joint tenancy interest to community property prior to transferring the interest to the entity. C 10/24/86.

220.0043 **Community Property.** Community property is not transmuted to separate property unless the requirements under Family Code sections 850–853 are met. Where spousal consents did not meet these requirements, the transfer of real property from a limited liability company in which the membership interests were community property to revocable trusts created by each husband and wife qualified for the exclusion from change in ownership under Revenue and Taxation Code section 62(a)(2). The transfers resulted solely in a change in the method of holding title to real property in which proportional ownership interests of the transferors and transferees remained the same in each and every piece of real property transferred. C 8/4/2006. (2007–1).

220.0050 **Condominium Conversion.**

1. The conversion of an apartment into a condominium unit is not, by itself, a change in ownership.

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2. A sale of a converted condominium unit to the present apartment tenant having a lease for a period less than 35 years is a transfer of the lessor's interest and, under Revenue and Taxation Code section 61(c)(2), a change in ownership. Conversely, if the lease is for a period of 35 years or more, there is no change in ownership. C 2/7/80; C 2/14/80.

220.0051 Condominium Conversion. The conversion of a cooperative housing unit into a condominium unit is not a change in ownership when the owner of the unit retains the same ownership interest in the unit after the conversion that he had before the conversion. Under Revenue and Taxation Code section 62(a)(2), such transfers are changes in the method of holding title to the units only. C 7/30/85; C 4/21/89.

220.0052 Condominium Conversion. The transfer of the common area appurtenant to cooperative housing units converted into condominium units is not a change in ownership if the conversion of the units is not a change in ownership. C 3/26/87.

220.0053 Condominium Conversion. The conversion of a community apartment project to a condominium, which provides each former owner of an equal undivided interest in the apartment property with ownership of the apartment he/she occupies and an undivided interest in the common area as a tenant in common, results only in a change in the method of holding title which does not change the proportional interests of the coowners and is excluded from change in ownership under Revenue and Taxation Code section 62(a)(1). C 1/23/91.

220.0055 Condominium Creation. The filing of a tract map, the obtaining of a bond guaranteeing tax payment, and even the mapping of the individual units by the assessor do not create a condominium. Only after the conveyance of at least one unit may each condominium owned in fee be separately assessed. The same conclusion is applicable to the conversion of an apartment complex to condominiums. C 11/18/88.

220.0060 Cooperative Housing Corporation. A transfer of stock in a cooperative housing corporation which conveys the exclusive right to occupancy of all or part of the corporate property constitutes a change in ownership requiring reappraisal of the unit transferred and establishment of base year value thereon. C 10/7/82.

220.0061 Cooperative Housing Corporation. A transfer of stock in a cooperative housing corporation which conveys the exclusive right to occupancy of all or part of the corporate property is not a change of ownership if:

- (1) The cooperative was financed or insured under state or federal programs specified in Revenue and Taxation Code section 62(i);
- (2) The regulatory and occupancy agreements have been approved by the appropriate state or federal agency; and

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(3) The transfer is to a person or family qualifying for purchase by reason of limited income as defined by the law authorizing the financing or insuring of the cooperative in the regulations of the governmental agency administering the program. C 8/30/90.

220.0063 Cooperative Housing Corporation—Limited Equity Cooperative.

The transfer of a membership interest in a limited equity cooperative is a transfer of a present interest in a specific portion of the property and is a transfer of beneficial use, and the interest transferred is substantially equivalent to the value of the fee. Thus, the transfer of a membership interest in a limited equity cooperative is a transfer of an ownership interest in a cooperative housing corporation pursuant to Revenue and Taxation Code section 61(i) and within the meaning of section 60, and it constitutes a change in ownership for property tax purposes. C 7/30/01. (2003–1).

220.0065 Corporate Merger. The merger of two corporations results in a change in ownership of the property previously owned by the merged corporation unless excluded as a corporate reorganization under Revenue and Taxation Code section 64(b), or under Revenue and Taxation Code section 62(k) as a transfer between two nonprofit corporations regulated by laws, rules, regulations or canons of the same religious denomination. The fact that two nonprofit corporations have overlapping boards of directors, similar goals and are interactive is not sufficient to exclude transfers of property between them. C 4/19/88.

220.0066 Corporate Merger. A “reverse triangular merger” occurred between Corporation A, a publicly owned bank, and Corporation B, owned by a holding company. As a result of the merger, Corporation B ceased to exist and Corporation A succeeded by operation of law to all of the property of Corporation B. Thus, a change in ownership occurred as to the real property that was owned by Corporation B before the merger and subsequently transferred to Corporation A via the merger.

The exclusion provided by Revenue and Taxation Code section 62(a)(2) is not available because the post-merger stock ownership of Corporation A is not the same as the pre-merger stock ownership of Corporation B. And since Corporations A and B were not affiliated corporations within the definition of Revenue and Taxation Code section 64(b), and since the holding company was not a common parent corporation, the exclusion from change in ownership provided by section 64(b) also is not available.

In addition, the pre-merger real property owned and retained by Corporation A underwent a change in ownership pursuant to Revenue and Taxation Code section 64(c) upon the transfer of all of Corporation A’s stock to the holding company during the merger. C 8/30/99. (2001–1).

220.0070 Corporate Ownership. Only corporate reorganizations which meet the requirements of Revenue and Taxation Code section 64(b) are not changes in ownership: all of the corporations involved must be members of an affiliated group before the reorganization takes place, the reorganization must qualify as a

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reorganization under Internal Revenue Code section 368, and the reorganization must be accepted as a nontaxable event by similar California statutes. LTA 4/12/83 (No. 83/49).

220.0071 Corporate Ownership. A merger of Corporation B into Corporation A (both own real property) is excluded from change in ownership under Revenue and Taxation Code section 64(b) where before the transaction: Corporation A was 44.76 percent shareholder but not a director of Corporation B; the remaining six shareholders (individuals) of Corporation B were directors of Corporation B; the nine shareholders of Corporation A (all individuals) included the six shareholders of Corporation B who were directors; and after the transaction, Corporation B no longer existed and Corporation A had the identical shareholders it had before the transaction but with different share percentages than before. C 11/28/95.

220.0072 Corporate Ownership. Property is leased to the corporation on a 55-year lease with more than 35 years remaining. All outstanding stock of the corporation is owned by the buyer. The corporation operates a business on the property, but should the buyer and/or corporation discontinue its present business operation the corporation would be liquidated and its assets would later be distributed to the buyer.

1. If the corporation purchases the property, the merger of its lease and the underlying fee would constitute a change in ownership at the time of purchase. Revenue and Taxation Code section 61(c) provides that the termination of a leasehold interest in taxable real property which has an original term of 35 years or more will be regarded as a change in ownership and therefore require reappraisal.

2. If the corporation purchases the property and upon subsequent liquidation distributes said property to buyer, a change of ownership would occur at that time. Revenue and Taxation Code section 61(i) provides that there is a change in ownership when a corporation transfers any interest in real property to one of its shareholders.

3. If buyer purchases the property from seller, no change of ownership would occur at the time of purchase. The corporation and its stockholders are separate entities under section 61(i). Accordingly, the stockholders purchasing the underlying fee which is subject to a lease for a term of 35 years or more would not be regarded as a change in ownership.

4. If buyer purchases the property from seller and the corporation is liquidated and its assets (including the remaining term of the fifty-five year lease) are distributed to buyer, a change of ownership would occur upon such liquidation (i.e., by merger or lease and underlying fee). See Revenue and Taxation Code section 61(c). C 2/22/80.

220.0073 Corporate Ownership. The liquidation of a subsidiary corporation and transfer of its assets to its 100 percent owner parent corporation followed by a liquidation of that parent corporation and a transfer of its assets to its 100 percent owner parent corporation constitute transfers among an "affiliated group" and would not qualify as changes in ownership.

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It may be argued that since individual shareholders are the ultimate owners of all property owned by all the corporations, there has been only a change in the method of holding title and therefore, the exclusion of Revenue and Taxation Code section 62(a)(2) is applicable. However, if the transfers of real properties are among members of an “affiliated group”, as defined in section 64(b), that section would apply and by its own terms, section 62(a)(2) would not. C 11/5/90.

220.0074. Corporate Ownership. A corporation’s transfer of an interest it owns in a partnership to one of its wholly owned subsidiaries is not a change in ownership unless the partnership interest prior to its transfer qualifies as one owned by an “original co-owner” within the meaning of Revenue and Taxation Code section 64(d). C 4/18/89.

220.0075 Corporate Ownership (Property Value). When an owner of corporate stock obtains ownership of additional shares that gives him or her control of a corporation, the corporate property should be reappraised at a value that reflects what it would sell for if sold on the open market. The price paid for the stock and the corporate debt could well reflect something other than the real property value. C 10/30/84.

220.0076 Corporate Ownership. The transfer by a corporation of its 60 percent ownership interest in a partnership which owns real property to its wholly-owned subsidiary is not a change in ownership, even though following the transfer the subsidiary will own an 85 percent interest in the partnership. Under Revenue and Taxation Code section 64(b), the parent corporation’s affiliation with and 100 percent ownership of the subsidiary means there is no change in the majority ownership of the partnership. The affiliation requirement in section 64(b) is met if the corporations making the transfers are members of the same affiliated group, and does not necessitate corporate reorganization. C 10/15/90; C 3/23/94. (M99-1).

220.0080 Corporate Property Transfers. A change in ownership of real property does not occur upon the transfer of property from X Corporation to Y Corporation where A and B each own 50 percent of the outstanding shares of X Corporation, Y Corporation issues all of its shares to X Corporation in return for the property, and X Corporation immediately distributes 50 percent of such shares to A and 50 percent to B. Since the proportional ownership interests of A and B remain the same after the transfer, Revenue and Taxation Code section 62(a)(2) and Property Tax rule 462(j)(2)(B) and (m)(5) are applicable. C 8/16/84.

220.0081 Corporate Property Transfers. Property transferred to a nonprofit public benefit corporation by an affiliated nonprofit public benefit corporation is excluded under Revenue and Taxation Code section 62(a)(2). Section 64(b) is inapplicable since it applies only to corporations which have shares of stock and not to nonprofit public benefit corporations. C 8/5/83.

220.0082 Corporate Property Transfers. Revenue and Taxation Code section 62 provides that when two or more people, e.g., a husband and wife, acquire property from a corporation they own, retaining the same proportional ownership

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interest in the property as they have in the corporation, the transfer is excluded from change in ownership. The payment of consideration for the property is not material to the decision of whether or not a change in ownership has occurred or whether the transfer is within the exclusion. C 9/8/89.

220.0083 Corporate Property Transfers. In order for transfers of real properties from a corporation to its shareholders to be excluded from change in ownership, the shareholders' ownership interests after the transfers must be the same as the ownership interests, as represented by stock, were prior to the transfers. The test is proportional ownership of any property received, not the value of the property received. C 10/31/89.

220.0084 Corporate Property Transfers. If a corporation transfers real property to a wholly owned subsidiary corporation or partnership, no change in ownership occurs. However, if the transferor owns less than 100% of the transferee entity, the property should be reappraised in total. C 3/18/87.

220.0085 Corporate Property Transfers. If a corporation transfers properties to its shareholders as tenants in common, so that each shareholder receives an interest in each property equivalent to his/her previous interest in the corporation, a change of ownership does not occur. However, if some of the shareholders subsequently transfer their ownership interests in a property or properties to their fellow shareholders, the assessor should regard the original transfer(s) as a change(s) in ownership and assess 100 percent of the property or properties that was or were the subject of the second transfer(s). Substance, not form, determines change in ownership questions. C 9/25/85.

220.0086 Corporate Property Transfers. For transfers of property to qualify as transfers made among members of an affiliated group, the affiliation must exist before and after the transfer. A transfer made as part of a split-up of affiliated corporations is not within the provisions of Revenue and Taxation Code section 64(b). C 5/14/85.

220.0087 Corporate Property Transfers—Affiliated Corporations. In order that a transfer of property from one affiliated corporation to another be considered other than a change in ownership because of such affiliation pursuant to Revenue and Taxation Code section 64(b), the transferor corporation and transferee corporation must be affiliated before and after the transfer. C 3/19/84.

220.0088 Corporate Property Transfers—Affiliated Corporations. In order that a transfer of property from one affiliated corporation to another be considered excluded from change in ownership pursuant to Revenue and Taxation Code section 64(b), the transferor corporation and the transferee corporation must be affiliated before and after the transfer. If the affiliation results from the transfer, exclusion from change in ownership is possible pursuant to Revenue and Taxation Code section 62(a)(2) if the transfer results only in a change in the manner of holding title to the property. C 7/3/87. (M99–2).

220.0090 Corporate Reorganization. A corporate reorganization effected by a series of stock transfers among corporations that have common owners will not

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result in a change in ownership of the real property of any of the corporations if each transfer either does not constitute a change in ownership or is excluded from change in ownership. For purposes of applying Revenue and Taxation Code section 64(b), if affiliation is one of multiple steps in the reorganization, then the provisions of that section are not applicable. In order to qualify for that exclusion, the corporations involved must be affiliated prior to the first step in the reorganization. Additionally, the step transaction doctrine may be applicable in analyzing such a series of transfers. C 2/14/92. (M99–1).

220.0091 Corporate Reorganization. Parent Corporation is owned 51.06 percent by a revocable husband and wife trust. Subsidiary B owns real property in California. Under a proposed corporate reorganization pursuant to Internal Revenue Code sections 355 and 368(a)(1)(D), commonly referred to as a “non-pro rata split off,” Parent Corporation would transfer all the stock of Subsidiary B to the revocable trust in exchange for a percentage of nonvoting stock of Parent. Following the proposed reorganization, the revocable trust would continue to own 51.06 percent of the outstanding voting stock of Parent, but the trust’s share of nonvoting stock and total outstanding stock would be reduced to less than 50 percent. The trust would also own 100 percent of all the outstanding stock of Subsidiary B. Such a reorganization would not result in a change in ownership of the real property of Subsidiary B pursuant to Revenue and Taxation Code section 64, subdivision (a). Section 64, subdivision (b), does not apply because Subsidiary B would not be part of the “affiliated group” both before and after the transaction. Further, section 64, subdivision (c), does not apply because the revocable trust is not a separate legal entity that owned a controlling interest in Subsidiary B through the revocable trust and Parent Corporation prior to the reorganization. C 9/23/2004. (2005–2).

220.0100 Corporate Stock Transfers. A change in ownership of real property occurs upon the transfer of all of the shares of X Corporation, which owns the real property, by Y Corporation to Z Corporation, even though Y and Z Corporations have some common owners, since after the transfer, a change in control of the land contemplated by Revenue and Taxation Code section 64(c) has occurred. C 2/14/84.

220.0101 Corporate Stock Transfers. A change in ownership of real property occurs upon the transfers of shares of stock in X Corporation, which owns the real property, and in Y Corporation to a newly-formed holding company in exchange for shares of stock in the holding company since, after the transfer, a change in control of the kind contemplated by Revenue and Taxation Code section 64(c) has occurred. C 3/3/83.

220.0102 Corporate Stock Transfers. A change in ownership of real property does not occur upon H’s transfer of all the outstanding shares of stock in S Corporation, which owns the real property, to P Corporation in return for all the shares in P Corporation. Since the proportional ownership interest of H in the real property remained the same after the transfer, Revenue and Taxation Code section 62(a)(2) is applicable. C 6/26/84.

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220.0103 **Corporate Stock Transfers.** A change in ownership of real property occurs upon the redemption of shares by a corporation where, after the redemption, a shareholder who previously held less than 50 percent of the corporation's stock now holds more than 50 percent thereof. Such is a change in control of the kind contemplated by Revenue and Taxation Code section 64(c). C 12/12/83; C 4/1/99. (Am. 2000-1).

220.0104 **Corporate Stock Transfers.** "Exclusive of any shares owned by directors", as used in Revenue and Taxation Code section 64(c) refers to the directors of the acquiring corporation. LTA 3/7/80. (No. 80/39).

220.0106 **Corporate Stock Transfers.** If a group of people acting individually purchase all of the stock of a corporation, a change in ownership does not occur unless one person obtains more than a fifty percent interest in or control of the corporation. Likewise, a subsequent conversion of the stock to a greater number of shares or a change in the designation given to the new issue(s) does not result in a change of ownership if there is no change in the voting rights attached to the old and new shares. The conversion would qualify as a reorganization.

Neither a change in the state of incorporation from Nevada to California accomplished by a statutory merger into a California corporation formed for the purpose nor a subsequent merger of the California corporation into a wholly owned subsidiary corporation followed by a corporate name change constitute a change in ownership if there is no change in control. C 9/22/89.

220.0107 **Corporate Stock Transfers.** Transfers of corporate stock which result in a change in control of a parent corporation result in a change in ownership of the property or properties owned by that corporation and all of the subsidiary corporations it controls directly or indirectly. *Sav-on Drugs, Inc. v. Orange County* (1987) 190 Cal.App.3d 1611, settled this issue. C 9/29/87.

220.0108 **Corporate Stock Transfers.** Property transferred to a newly formed corporation in exchange for 100 percent of its stock results in a change in the manner of holding title, not a change in ownership. Likewise, a subsequent transfer of 50 percent or less of the stock of the new corporation to an unrelated person will not result in a change in the direct or indirect control of the new corporation. Any additional distribution of stock by the original owner will result in a change in ownership as provided in Revenue and Taxation Code section 64(c) or (d). Transfers of partnership interests are subject to the same analysis. C 5/22/87 and C 12/30/87.

220.0109 **Corporate Stock Transfers.** The purchase by an unrelated foreign corporation of 100 percent of the stock of a second foreign corporation results in the purchaser obtaining indirect control of all property owned by the subsidiary or subsidiaries of the second corporation whose stock was purchased. A change in ownership of all of a subsidiary's property located in California occurs regardless of the state or nation in which the buyer or seller is incorporated and regardless of the fact that the local corporation may be a fourth-tier or fifth-tier subsidiary. LTA 4/26/89 (No. 89/39); C 12/20/89.

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220.0110 Corporate Stock Transfers. The sale by corporation X of 50 percent of the stock in wholly owned subsidiary Y to an unrelated third corporation does not transfer ownership of Y corporation's assets. There could be a change of control if more than 50 percent of the stock were sold, in which case all of subsidiary Y's real property, including leaseholds, would be subject to reappraisal.

Mineral leases are to be treated like all other leases in such circumstances. Only when a mineral lease itself is created, renewed, assigned or otherwise transferred is the special treatment afforded such a lease under Revenue and Taxation Code section 61(a) appropriate. C 7/23/87.

220.0111 Corporate Stock Transfers. Generally, transfers of corporate stock do not trigger a change in ownership of a corporation's property. There are two exceptions, i.e., (1) if a single owner obtains direct or indirect ownership or control of more than 50 percent of the corporate voting stock; e.g., if Mr. Jones purchases 40 percent of corporation X stock and is already majority owner of Y corporation which, in turn, owns 20 percent of X corporation stock; or (2) if owners transfer property to a corporation but the transfer is excluded from "change in ownership" as a change in the method of holding title, then the owners become "original co-owners" under Revenue and Taxation Code section 64(d), and subsequent transfers by any of them in one or more transfers that result in a transfer of more than 50 percent of the total interests in the corporation constitute a change in ownership. C 8/11/86; C 1/22/99. (Am. 2000–1).

220.0112 Corporate Stock Transfers. If a corporation owning less than 50 percent of another corporation obtains control of the other corporation through no action on its part, there is a change in ownership requiring reappraisal. The fact that the controlled corporation caused the change by redeeming outstanding shares owned by others, a reverse stock split, etc., is of no significance. The statute does not require the person or entity obtaining control to actually purchase stock itself; nor must there be an intent to obtain control. The fact of the change in control is determinative. C 4/1/85.

220.0113 Corporate Stock Transfers. When a new corporation obtains indirect ownership or control of a corporation which owns real property, there is a change in ownership of such real property notwithstanding the fact that the parent corporation at the top of the corporate chain held indirect ownership or control of the acquired corporation before and after the acquisition. C 6/12/95.

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220.0114 Corporate Stock Transfers. Corporation A is owned 96.3 percent by Corporation B and 3.7 percent by individual Z. Corporation B is owned 99.5 percent by individuals X and Y and 0.5 percent by individual Z. Corporation B is merged into Corporation A by stock cancellations and transfers that will provide newly issued voting stock in Corporation A to the owners of Corporation B. After the merger, the former owners of Corporation B, X and Y, will retain their majority interest in and control of Corporation A through ownership of the newly issued voting stock in Corporation A.

The real property transferred from Corporation B to Corporation A as a result of the merger would undergo a change in ownership. After the merger, the proportional ownership interests of the transferors in the real property does not remain the same and, therefore, Revenue and Taxation Code section 62(a)(2) does not apply. Furthermore, the stock transfers do not constitute a reorganization of corporations in an affiliated group and, thus, the exclusion of section 64(b) is inapplicable. The corporations were not connected through stock ownership with a common parent corporation owning 100 percent of the voting stock prior to the merger. However, there is no change in ownership of the real property owned by Corporation A because that real property continues to be held by Corporation A and because Revenue and Taxation Code sections 61(b), 64(c), and 64(d) are inapplicable. C 5/18/93. (M99–1).

220.0115 Corporate Stock Transfers. A redemption of all outstanding corporate stock that is concurrent with the sale of stock representing a 50 percent ownership interest in the corporation to each of two unrelated individuals does not constitute a change in ownership under Revenue and Taxation Code section 64(a) since neither of the two new shareholders has obtained a majority interest in or direct or indirect control of the corporation. C 4/18/89. (M99–1).

220.0116 Corporate Stock Transfers. All the voting capital stock of Corporation X is held by an irrevocable trust of which individuals S, A, B, and C are the income beneficiaries. Corporation X owns real property which it has held prior to the formation of the trust in 1969. Income from the trust is paid 75% to S with the remaining 25% paid equally to A, B, and C. The trust provides that upon the death of S, the trust is terminated and the stock of Corporation X will be distributed in equal shares to A, B, and C.

The distribution of corporate stock held by an irrevocable trust to the trust beneficiaries will not result in a change in ownership under Revenue and Taxation Code section 60 because one of the necessary elements of a change in ownership, the transfer of the beneficial interest, is lacking. Furthermore, the distribution of the stock of Corporation X to A, B, and C will not result in a change in ownership under Revenue and Taxation Code section 64(c) because neither A, B, nor C would obtain control of the voting stock of Corporation X after the transfer; each would have 33.33% of such stock after the transfer. C 6/21/2000. (2002–1).

220.0117 Corporate Stock Transfers. For property tax purposes, the date of a change in control under Revenue and Taxation Code section 64(c) occurs on the

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date that the purchasing corporation is deemed to have effectively purchased more than 50 percent of the selling corporation's voting stock. C 10/18/2000. (2002–1).

220.0120 Corporate Voting Stock Proxies. The transfer of an irrevocable right to vote shares of stock owned by the transferor of the right is allowed only under circumstances described in Corporations Code section 705. When the transfer satisfies the Corporations Code requirements and involves more than 50 percent of the voting stock of the corporation, a change in control occurs and reappraisal of all corporate real property is in order.

Where the transferee of the proxy has only limited discretion when exercising the voting rights, those limitations must be examined to determine whether true control has actually transferred. Additionally, a transfer solely to secure a debt is excluded from change of ownership by Revenue and Taxation Code section 62(c)(1). C 2/20/85.

220.0130 Date of Change. For sales of property, the date of change in ownership is rebuttably presumed to be the date the deed is recorded. This presumption may be rebutted by evidence proving a different date, such as the date an agreement of the parties became specifically enforceable.

In general, an oral agreement to sell real property is invalid unless some note or memorandum is in writing and is signed by the party to be charged. However, this rule does not apply when an oral agreement has been fully executed. An executed agreement is not assailable by the parties or by third persons. An agreement written after the fact can confirm a change in ownership as of the date of an oral agreement. C 8/10/87.

220.0131 Date of Change. When a party to a real property transfer refuses to execute the contract of sale and a court issues an order for specific performance of the contract, the date of the change in ownership relates back to the date set in the contract, not to the date of the court order. C 12/26/84.

220.0132 Date of Change. If a contract for the sale of real property can be specifically enforced, equity regards as done that which ought to be done and considers the purchaser to be owner of the property upon execution of the contract. If a purchaser is required to bring a court action for specific performance and is successful, transfer of title is nevertheless considered to have occurred on the date the contract became enforceable, i.e., when it was signed. C 11/19/80.

220.0133 Date of Change. An undelivered deed will not pass title to property. Deeds take effect only when delivered; however, delivery is a question of fact to be determined from all of the circumstances that will divulge a grantor's intent. When a grantor retains the deed, continues to live in the property, and claims the homeowner's exemption thereon, it is reasonable to conclude that ownership changed only on actual delivery and recordation of the deed. C 6/24/94.

220.0134 Date of Change. The preparation of a deed, including its notarization, does not pass title of property to the named grantee, unless the grantor so intends.

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Retention of the deed by the grantor together with a declaration that the grantor intended to transfer title only upon recordation indicates that the date of the change in ownership is the date of recordation. C 5/9/88. (M99-1).

220.0135 Date of Change. An unrecorded grant deed conveying title to real property is valid and is presumed to transfer the full fee interest in the property. The requirements for a valid deed are a grantor, a grantee, a writing and subscription, delivery, and acceptance. Recordation is not essential to the validity of a deed. The date of change in ownership resulting from a transfer effected by an unrecorded deed is the date of delivery of the deed. C 12/11/97. (M99-1).

220.0136 Date of Change. In the case of a decedent, title to property transfers on the date of death, whether the estate is probated or not. If there is a successful will contest, or if there is a will contest that is settled prior to a rendition of a judgment, the same date of death should be used for change in ownership purposes. C 4/13/81. (M99-2).

220.0137 Date of Change. Property Tax Rule 462.200(b) states that when more than one person's name appears on a deed, there is a rebuttable presumption that all persons listed on the deed have ownership interests in that property. An agreement executed prior to the date a deed was recorded, which specifically provided that the transfer of beneficial ownership of the deeded property would not occur until construction began, may be considered sufficient evidence to rebut the presumption and to establish that the date of change in ownership occurred on a date other than the recording date, the subsequent date upon which construction commenced. C 8/10/2000. (2002-1).

220.0140 Date of Death. When a person is missing for seven years, the law presumes he/she is deceased (Evidence Code section 667). The law also presumes that life continues throughout the seven year period. Evidence that death occurred at some other time may be used to overcome this latter presumption and thus establish a more likely date of death and the date to use for change in ownership purposes. C 3/29/85.

220.0145 Deed Cancellation. Grant deeds that are voidable pass title, subject to being set aside in appropriate legal proceedings for specific, recognized reasons, one of which is undue influence. Until set aside, such deeds are operative and result in reappraisal. When a deed is voided by court action, the property value should be changed back to its enrolled value at the time it was deeded plus the appropriate inflation adjustments to the date of the judgment. C 11/7/91.

220.0148 Deed Correctness Presumption. Evidence Code section 662 and Property Tax Rule 462.200(b) provide authority for the assessor to rebut the presumption that deeds are correct and valid. For properties under the Williamson Act, Government Code provisions condition conveyance on termination of the contract, approval of subdivision parcel maps, and minimum acreage requirements for the property remaining under contract. Where deeds or contracts of sale that purport to convey portions of a larger property that is subject to a Williamson Act contract provide evidence that these conditions have not been

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met, such documents are sufficient to rebut the presumption. Under these circumstances, the assessor is within his or her authority not to recognize the purported transfers for assessment purposes. C 12/9/2002. (2004–1).

220.0149 Deed Presumption. While the owner of the legal title to property is presumed to be the owner of the full beneficial interest, this presumption may be rebutted by clear and convincing evidence. Property Tax Rule 462.200(b)(2) sets forth the types of documentary evidence that may constitute clear and convincing evidence sufficient to rebut the deed presumption. C 9/25/2006. (2007–1).

220.0149.005 Deed Presumption. Whether property is owned by a partnership or individuals as tenants in common is a matter of fact for the assessor to determine. Even though no partnership agreement may exist, a written agreement is not required under the Corporations Code. Further, in determining whether a partnership is formed, the intention of the parties is the ultimate test. The intent of the parties can be deduced from a partnership agreement as well as the surrounding circumstances. Where no partnership agreement exists, intent to form a partnership is deduced from the parties' conduct, transaction, and declarations. Property Tax Rule 462.200(b)(2) sets forth the types of documentary evidence that may constitute clear and convincing evidence sufficient to rebut the deed presumption that the owner of the legal title to property is the owner of the full beneficial interest. C 4/19/2007. (2008–1).

220.0150 Deeds of Trust. Deeds of trust are legal instruments used to secure payment of a note or notes executed by the purchaser or purchasers of property. They do not themselves transfer title to the property but do, upon default, authorize the holder of the trust deed to convey title to the property to which the trust deed relates in order to satisfy the secured obligation.

The transfer to a third party, a redelivery to the trustor, or the cancellation of a trust deed does not constitute a change in ownership. The execution of a deed as part of a foreclosure by the holder of a trust deed does constitute a change in ownership. C 1/27/92.

220.0153 Delivery of Deed. Delivery and acceptance of a deed conveying title to the real property are questions of fact and may be inferred from evidence that the grantee has exercised a right of ownership of the property by subsequently transferring his or her interest in the property to a third party. Although the grantee may not take actual physical possession of the property prior to the transfer to the third party, the conveyance itself is an exercise of a right incident to ownership of a present beneficial interest in the property for change in ownership purposes. C 12/11/97. (M99–1).

220.0155 Development Rights Transfers. In *Mitsui Fudosan v. Los Angeles County*, 219 Cal.App.3d 525, the court held transferable development rights to be taxable real property interests which, when conveyed, result in a change in ownership requiring reappraisal of the development rights. LTA 2/11/91 (No. 91/12) (Am. 2002–1).

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- 220.0158 **Disclaimed Interest.** A beneficiary may disclaim any interest in any property, including an interest created under a will, by meeting the requirements set forth in the Probate Code. A properly executed and filed disclaimer results in the interest disclaimed descending and being distributed as though the disclaimant had predeceased the creator of the interest. Thus, the creation of a life estate in a friend and a remainder interest in the children of the creator of the interest would, on disclaimer by the life tenant, qualify as a parent-child transfer. C 5/23/89. (M99–1).
- 220.0160 **Easement.** The creation of a conservation easement conveying all rights and interest in the property except legal title, exclusive in perpetuity, and running with and burdening title to the property constitutes a change in ownership under Revenue and Taxation Code section 60 and Property Tax Rule 462(a). Such easement should be treated for assessment purposes as a separately assessable real property interest. C 1/7/82; C 8/6/2003. (Am. 2005–2).
- 220.0161 **Easement.** No change in ownership of real property occurs when an owner transfers the property to a city but retains an easement therein, creating a possessory interest. Property Tax rule 462(e) exempts an interest created by a reservation in an instrument deeding property to a tax exempt public entity. If the owner transferred the entire property to the city and the city then granted the easement to the owner, however, there would be a change in ownership under Revenue and Taxation Code section 61(b) and rule 462(e). C 8/12/88.
- 220.0162 **Easement.** The grant of a nonexclusive easement of ingress and egress across one parcel to another is not a change in ownership since the interest transferred is not substantially equal to the fee value of the land encompassed in the easement area. C 12/6/85.
- 220.0163 **Easement.** The granting of a conservation easement to a nonprofit entity which easement restricts the use by the owner of the property to the existing and historical ranching and farming activity compatible with the preservation and protection of the natural, open space and scenic qualities of the property does not result in a change in ownership regardless of the length of the period for which the easement is to exist. C 2/16/84; C 7/28/2003. (Am. 2005–2).
- 220.0164 **Easement.** When the grant of the right to divert water is attached to the land, an easement is created. An easement is an interest in real property, the transfer of which may constitute a change in ownership. C 10/12/82. (M99–1).
- 220.0165 **Easement.** Under Revenue and Taxation Code section 65.1, a change in ownership in common areas occurs provided that the interests transferred meet the definition of a change in ownership and those areas are an appurtenance to other real property also experiencing a change in ownership. A parking lot easement that is nonexclusive is not reserved as an appurtenance to a building pad site in a shopping mall as required by section 65.1(b). Since such easement rights are nonexclusive, they are not substantially equal to the value of the fee interest and do not result in a change in ownership. However, section 65.1(b) does not preclude the pad site, upon change in ownership, from being valued to reflect the

CHANGE IN OWNERSHIP (Contd.)

amenities and the enhancement afforded by the common area, including the parking lot. Even though the agreement provides that the company may obtain an exclusive right to those parking areas if certain provisions are met, that interest is merely contingent and does not represent a present interest in real property. C 7/19/2005. (2006–2).

220.0170 Economic Recovery Tax Act. A “safe harbor” lease/agreement under which the seller sells only the limited right to be treated as the owner of the property “solely for federal income tax purposes” and, simultaneously, the purchaser leases back only the right to be treated as the lessee of the property “solely for federal income tax purposes” is not a change in ownership under Revenue and Taxation Code section 60. The right to take tax credits and/or depreciation is not substantially equivalent to the fee interest in the property, and there has been no transfer of the beneficial use of the property. C 11/23/81.

220.0175 Effective Date. A document binding the signatories thereto to dissolve a corporation on the happening of a specific future event does not result in reappraisal until the event occurs. A binding contract to perform is not performance. C 12/26/84.

220.0180 Employee Benefit Plan. When a corporation sells the majority of its stock to its Employee Stock Ownership Plan (ESOP) for cash which it uses to purchase all of the stock in a number of unrelated corporations, a change of ownership does not result from the sale to the ESOP because of the specific exclusion contained in Revenue and Taxation Code section 66.

The acquisitions by the corporation do result in changes in ownership and require reappraisal of real properties owned by the acquired corporations and located in this state. This opinion would not change whether the acquisitions occurred before or following the ESOP acquisition of the employer corporation stock. C 8/18/88.

220.0181 Employee Benefit Plan. The intent of Revenue and Taxation Code section 66 was to extend property tax benefits to pension plans. The sole purpose of section 66(a) was to eliminate any possibility of a reappraisal whenever a participant or a participant’s beneficiary became eligible for benefits.

Revenue and Taxation Code section 66(b) excludes any contribution of real property to an employee benefit plan. A “contribution” has been defined as a voluntary transfer to a corporation with no consideration involved. See *United Grocer’s Ltd. v. U.S.*, 308 F.2d 634, and *Commissioner of Internal Revenue v. Vandaveer*, 114 F.2d 719. It is our opinion, therefore, that the contribution spoken of in section 66(b) is an original gift to the benefit plan.

Where property is transferred by a private firm to an employee benefit plan by conveyance and is then leased back for 15 years, plus options for 30 years, two changes in ownership have occurred, one when the property is conveyed, and the other when the property is leased back for a period, including options, of 35 years or more.

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Where a non-California corporation wholly owned by a pension trust conveys title in real property back to the pension trust which, simultaneously, convey the property to several newly formed California nonprofit holding corporations, the pension trust's interest in the holding corporation being in the exact same proportions as its interests in the non-California corporation, a change in ownership has occurred and reappraisal is required. Such is not an original contribution of property to a pension trust, and under the entity theory, a transfer from a trust to a corporation does not qualify for exclusion from change in ownership. C 6/10/80.

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- 220.0182 **Employee Benefit Plan.** Where B, trustor and trustee of a revocable trust owning real property, as trustee conveyed the property to his pension plan, assuming that the transfer was made without consideration, the transfer was a contribution by B excluded under Property Tax rule 462(m) (4). C 2/6/85.
- 220.0183 **Employee Benefit Plan.** A transfer of real property by an employee benefit plan to trustees of individual retirement accounts (IRAs) owned by employees is not excluded from change in ownership as a contribution to employee benefit plans since the IRAs do not qualify as employee benefit plans for purposes of Revenue and Taxation Code section 66. Neither is the transfer to the trustees excluded from change in ownership under Revenue and Taxation Code section 62(a)(2) since the owners of the transferred property did not have the same proportional ownership interests following the transfer as they had prior to the transfer. C 2/14/91. (M99–1).
- 220.0184 **Employee Benefit Plan.** The distribution of separate parcels of real property from an employee benefit plan to each of the participants is excluded from change in ownership under Revenue and Taxation Code section 66(a) as long as the value of the parcels or property interests distributed to each of the plan participants represent the present value of the interests each held in the benefit plan. C 2/10/2000. (2001–1).
- 220.0185 **Equity Share Agreement.** An agreement that transfers occupancy of, but not legal title to property in return for the payment of an existing mortgage and other costs of ownership, provides a return to the “investor” of the value of his equity within 48 months, and reserves to the “investor” the right to share in any profit from a sale to a third party does not constitute a change in ownership. It is, in essence, a lease with an option to purchase. C 1/29/91.
- 220.0190 **Escrow Conditions.** The general rule is that when a deed is delivered or recorded by an escrow holder prior to the time a condition or conditions specified in the escrow instructions are satisfied, the transfer is void and no title passes to the grantee. However, a party may be held to have waived a condition if the escrow closes without objection. When there is a waiver, either by express agreement or by inference from circumstances indicating an intent to waive, a change in ownership occurs. A subsequent default in payment by the buyer results in a second change in ownership. C 8/13/84.
- 220.0195 **Estate for Years.** A lease agreement that requires the lessee to construct improvements which, on termination of the lease, become the property of the lessor creates in the lessor a reversion interest in the improvements. The lessee’s interest is an estate for years which if transferred to a third party at a time when less than 35 years remain on the lease term does not constitute a change of ownership per rule 462(d)(2). The termination of the estate for years and vesting of full ownership in the reversioner-lessor is a change of ownership. C 8/29/91.
- 220.0196 **Estate for Years.** (1) No change in ownership occurs when an owner transfers real property to the USA, but retains an estate for years of 25 years restricted to single family residential and livestock ranching, (2) Since there is

CHANGE IN OWNERSHIP (Contd.)

no change in ownership, there is no taxable possessory interest in the transferor. The transfer of the estate for years to a third party, therefore, is not a transfer of nor is it the creation of a taxable possessory interest, nor is its transfer a change in ownership since the term is for less than 35 years. (3) The base year value of the property could be adjusted to reflect the loss of the right to put the property to a higher and better use provided it could be established as a factual matter that the base year value reflected a value for such right. (4) The restrictions on use contained in a deed conveying the property to the USA is an enforceable restriction within the meaning of Revenue and Taxation Code section 402.1. C 7/20/95.

220.0197 Estate for Years. The creation of an estate for years giving Beneficiary X (who is not a spouse or a registered domestic partner, or otherwise eligible for an exclusion) the right to use and occupy the transferor's residence for a period of 34 years is not a change in ownership under Property Tax Rule 462.060(b) since the term is less than 35 years. The termination of the estate for years and the vesting of ownership in someone other than the transferor or the transferor's spouse is a change in ownership, absent an applicable exclusion. If the ownership vests in the children of the transferor, then the parent-child exclusion may be available if a claim is filed. C 3/15/2006. (2007-1).

220.0198 Exchange. An owner of real property contemplated a transfer through the use of a reverse exchange in which the subject property is first transferred to another with instructions to sell the property when a buyer becomes available. The transaction was not consummated within the six-month safe harbor period required by Internal Revenue Code section 1031, however, and the property was reconveyed to the owner by means of a deed in lieu of foreclosure. Neither the conveyance nor the reconveyance resulted in a change in ownership because each of those transfers involved only the transfer of legal title to the property, not a transfer of the beneficial interest in the property, which is a required element of change in ownership. C 8/16/01. (2003-1).

220.0199 Exchange—Internal Revenue Code Section 1031. The transfer of real property to a “strawman”, i.e., a person who obtains title solely for the purpose of conveying it pursuant to an agreement intended to effect an Internal Revenue Code section 1031 tax-free exchange, does not result in a change of ownership. The transfer by the “strawman” to a third party is a change in ownership unless that third party is an individual or entity who/that owns all interests in the original transferor and the ultimate third party transferee. Since the strawman or strawmen has/have no beneficial interest in the property, neither are owners for change in ownership purposes. C 7/5/88; C 6/5/97. (Am. M99-1).

220.0200 Exclusions.

1. Any transfer of title between an individual and a legal entity or between legal entities which changes only the method of holding title and not the proportional interests of the transferors and transferees is excluded under Revenue and Taxation Code section 62(a).

CHANGE IN OWNERSHIP (Contd.)

2. Any transfer between co-owners who held title to property between March 1, 1975, and March 1, 1981, is excluded under section 62(j) if the property in question was eligible for a homeowners' exemption during the entire period of co-ownership. LTA 12/9/80. (No. 80/180).

Note: AB 152/Stats. 1981, Ch. 1141 extended the cut-off date to March 1, 1981.

220.0201 Exclusions. Revenue and Taxation Code section 62(a)(1) speaks to transfers of real property, as generally evidenced by recordation of a deed, between co-owners (i.e., tenants-in-common and joint tenants). Section 62(a)(2), on the other hand, refers to transfers of interests in real property, whether represented by stock, partnership interest, or otherwise, between an individual or individuals and a legal entity or legal entities. The transfer of such interests in real property is excluded so long as the proportional ownership interests remain the same in each and every piece of real property before and after transfer. Section 64(b), however, is controlling over section 62(a)(2) since it is a more specific exclusion. Thus, where a transfer is excluded under section 64(b) rather than section 62(a)(2), there are no "original co-owners'" interests created, and section 64(d) would not trigger any change in ownership. LTA 2/18/83 (No. 83/20).

220.0202 Exclusions. The exclusion under Revenue and Taxation Code sections 60 through 66 of transfers of certain property interests from the meaning of "change in ownership" is a valid construction of article XIII A of the California Constitution. OAG 4/18/80 (No. 79-1005, Vol. 63, p. 304).

220.0203 Exclusion. Transfers of property to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation do not constitute changes in ownership. If, for example, a wife is given a life estate in property and the husband gets a remainder interest in the property, a subsequent conveyance by the now ex-wife to the husband would be considered to have been pursuant to the "Marital Settlement Agreement" and would not result in reappraisal.

Once a judgment of dissolution has become final, transfers between former spouses made pursuant to the property settlement approved by the courts are not changes in ownership; however, transfers made by parties to a property settlement that are not part of the settlement are changes in ownership subject to reappraisal. C 4/14/87.

220.0204 Exclusions. Persons claiming a transfer is not a change in ownership because of a common law "marital" relationship entered into in California are not eligible for the "interspousal" exclusion contained in Revenue and Taxation Code section 63. The exclusion does apply if it is factually determined that a common law "marital" relationship was entered into in a jurisdiction that recognizes such "marriages" as valid. C 3/9/90.

220.0205 Exclusions. The Revenue and Taxation Code section 62(g) conclusive presumption that all homes subject to property tax, eligible for the homeowners' exemption, and located on leased land have a renewal option of at least 35 years

CHANGE IN OWNERSHIP (Contd.)

applies regardless of who purchases the land. Further, the transfer of a lessor's interest in real property subject to a lease with a remaining term (whether actual or conclusively presumed) of 35 years or more does not constitute a change in ownership whether the transferee is the lessee or another party. C 8/11/93.

220.0206 Exclusions. Transfers by a governmental agency to its wholly owned public facilities corporation result in changes in the manner of holding title and not changes in ownership for reappraisal purposes. Since, however, the corporation is a separate entity, its property, whether a possessory interest or a fee interest, is not exempt under section 3(b) of article XIII of the California Constitution.

Should the public facilities corporation lease or lease-back property to a tax exempt public entity, the property would remain subject to tax unless the use to which it is put e.g., exclusive use for public school purposes, provides a basis for exemption or the exemption requirements of Revenue and Taxation Code section 231 are satisfied. C 4/20/93.

220.0207 Exclusions. When determining if a transfer to a legal entity is excluded from change-in-ownership because only a change in the manner of holding title, without any change in the proportional ownership interests of the transferors, has occurred, amounts paid by the legal entity to one partner, stockholder, etc. for extra services rendered are not taken into consideration. Guaranteed payments (the term used in Internal Revenue Code section 707) which are determined without regard to the income of the legal entity and which are paid in consideration of the performance of services by the recipient on an arm's-length basis do not constitute additional ownership interests in the legal entity for purposes of Revenue and Taxation Code section 62(a)(2). C 8/14/89.

220.0208 Exclusions. To qualify for the Revenue and Taxation Code section 64(b) exclusion afforded transfers by members of an "affiliated group", it is only necessary that there be at least two corporations related by common ownership. While the word "group" may suggest a necessity for three or more related corporations, there is nothing else to suggest the statutes or rules require more than two; nor does such a limitation appear reasonable or necessary. C 4/15/87.

220.0209 Exclusions. An assertion by a transferor of property that a grant deed was required by federal law and hence, transferred only bare legal title to the property does not overcome the presumption that a deed grants full beneficial title to the recipients. Information surrounding the facts of the transfer, including appropriate documents and references to specific federal statutes, would have to be presented and found sufficient to overcome the presumption. C 4/18/89.

220.0210 Exclusions. If on the death of a spouse the survivor exercises a right to purchase at a fixed price, the separate property residence of the decedent, the transfer would not be eligible for the interspousal exclusion. The survivor would be purchasing the residence from the decedent's heirs who obtained title thereto as of the decedent's death. It is possible that the parent/child exclusion might apply, depending upon the relationship between the heirs and the purchaser. C 5/5/87.

CHANGE IN OWNERSHIP (Contd.)

- 220.0211 **Exclusions.** When a surviving spouse acquires majority ownership of a partnership, through the spousal property order of the probate court granting her the deceased spouse's community property interest, the change in control of the partnership is not a change in ownership triggering reappraisal for property tax purposes. The interspousal transfer exclusion of Revenue and Taxation Code section 63 applies to the transfer. C 8/1/96; C 2/22/2007. (M99–1; Am. 2008–1).
- 220.0236 **Execution Sales.** As the result of Statutes of 1982, Chapter 1364, the statutory right of redemption on property sold at an execution sale is eliminated, except upon foreclosure of a trust deed or mortgage (Statutes of 1982, Chapter 497). In such case, property may be redeemed within one year after the sale where the proceeds therefrom are insufficient to satisfy the secured indebtedness, or within three months thereafter where the proceeds are sufficient. C 10/3/84.
- 220.0240 **Foreclosure.** A change in ownership occurs upon the purchase from a trustee of property foreclosed upon under a land sale contract. The purchase results in a transfer of a present interest in property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest. C 5/9/84.
- 220.0241 **Foreclosure.** A change in ownership occurs when property sold under a contract of sale is reclaimed by the seller in a foreclosure proceeding because of the buyer's failure to satisfy the terms of the contract. C 1/4/91.
- 220.0250 **Holding Agreements.** Although Property Tax Rule 462(k)(3) contemplates a holding agreement created by a transfer of title from a principal, it makes clear that a transfer from the entity holding title to the principal is not a change in ownership. The rationale for the conclusion is that the beneficial use is in the principal, while only legal title is in the holding agent. The result would not differ in a situation in which the holder received legal title from a source other than the principal and thereafter transferred it to the principal. C 8/17/89.
- 220.0251 **Holding Agreements.** Under Property Tax Rule 462(k)(3), a holding agreement is an agreement between an owner of property and another entity whereby the owner conveys the property to the entity merely for the purpose of holding title. The rule contemplates a written agreement between the owner and entity, indicating that at all times the entity is subject to the terms of the agreement and is permitted to hold record title only. Lacking a written agreement, an owner may claim the existence of a constructive or resulting trust (Code of Civil Procedure section 1972), in which case he or she must establish the existence and the validity of such a trust. C 5/14/93. (M99–2).
- 220.0253 **Housing Cooperative.** To take advantage of the exclusion from change in ownership contained in Revenue and Taxation Code section 62(i), a housing cooperative must show the assessor three things: (1) that the cooperative mortgage was insured under, or the cooperative was purchased, financed, or assisted by, funds from the applicable federal housing act or financed by a direct loan from the California Housing Finance Agency; (2) that the applicable government lender or insurer had approved regulatory and occupancy

CHANGE IN OWNERSHIP (Contd.)

agreements; and (3) that the transfer is to the member household qualified for purchase by reason of limited income. If federal funding was not used to insure the cooperative mortgage, or to purchase, finance, or assist the cooperative and there was no loan from the California Housing Finance Agency, the transfer of stock or membership certificates is not eligible for exclusion under section 62(i). C 10/1/2001. (2003-1).

220.0255 Incorporation of Partnership. No change in ownership occurs on the contribution of partnership property to a newly organized corporation in exchange for shares of stock in the corporation, where the partnership dissolves and distributes the shares to the partners such that they have the same proportional ownership interests in the corporation as they had in the partnership.

No change in ownership occurs on the contribution of partnership interests to a newly organized corporation in exchange for shares of stock in the corporation, where the partners have the same proportional ownership interests in the corporation and its assets as they had in the partnership. Upon such contribution, the partnership, having the corporation as its sole member, ceases to exist.

No change in ownership occurs on the distribution of partnership property to the partners in accordance with their proportional partnership interests or on the subsequent contribution of their proportional interests in the property to a new corporation in exchange for shares of stock in the corporation, where the shareholders have the same proportional ownership interest in the corporation as they had in the partnership. C 8/4/83.

220.0258 Individual Retirement Account. When a taxpayer is both the custodian and only beneficiary of her individual retirement account (IRA), a transfer of real property from the IRA to herself as an individual is merely a change in the method of holding title without any change in the right to beneficial use. Since taxpayer has the same beneficial ownership before and after the transfer, there is no change in ownership. C 12/8/2006. (2007-1).

220.0260 Inheritance. Except for transfers which take effect upon the death of a spouse, there is a change in ownership upon the date of death of an individual. When there has been a delay in the assessor's discovery of an individual's death, an escape assessment levied against the heir or heirs is proper. C 5/13/82.

220.0261 Inheritance. Where property of a decedent is transferred as a result of settlement of a contested probate matter, the date of the change in ownership is the same as it would have been had the matter been fully litigated and the property awarded in the same manner, namely, the date of the decedent's death. C 4/13/81.

220.0262 Inheritance. Probate Code section 6144 contains what is referred to as a doctrine of equitable conversion, to the effect that if a will directs conversion of real property into money, the property and its proceeds are deemed personal property from the time of the testator's death. However, when an executor is authorized but not mandated to sell real property, there is no equitable conversion

CHANGE IN OWNERSHIP (Contd.)

and a change of ownership occurs at the time of the testator's death and again at the time of a sale by the executor. C 6/4/90.

220.0263 Inheritance. A testamentary transfer to a child by a parent was held by the court in *Larson v. Duca* (1989) 213 Cal.App.3d. 324 to have occurred on the date of distribution of the estate rather than on the date of death for purposes of applying the parent/child exclusion from change in ownership. This was contrary to an opinion issued by Board staff based upon Probate Code section 300. Subsequently, Revenue and Taxation Code section 63.1(c)(1) was amended to provide that as of January 1, 1993, transfers between parents and their children under will or by intestate succession are, for change in ownership purposes, made as of the date of the decedent's death, if the decedent died on or after November 6, 1986. C 7/10/87.

220.0267 Interspousal Transfers. Husband and wife jointly formed a revocable trust. Husband and wife executed a deed conveying their interest in real property from "community property with right of survivorship" to themselves as the trustees of the trust. Later, husband and wife, as trustees, transferred the property to a corporation in which 51 percent of the voting stock was held in wife's name and 49 percent of the voting stock was held in husband's name.

The transfer of the property to the corporation was a change in ownership pursuant to Revenue and Taxation Code section 61(j), unless husband and wife can provide clear and convincing evidence to establish that their voting shares in the corporation are community property. If the presumption that husband and wife own 49 percent and 51 percent of the corporation, respectively, is not rebutted, the proportional transfer exclusion of section 62(a)(2) will not apply. Also, the interspousal transfer exclusion of section 63 does not apply because the transfer to the corporation was not a transfer between spouses. C 5/31/2007. (2008–1).

220.0268 Interspousal Transfers. A transfer of a joint tenancy interest in real property to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of marriage is excluded from change in ownership under Revenue and Taxation Code section 63. A mother conveyed property to herself, her daughter, and her son-in-law as joint tenants. The mother became an "original transferor" and the daughter and the son-in-law became "other than original transferors." Subsequently, the daughter and the son-in-law divorced and the son-in-law deeded his interest in the property to his wife (the daughter) in connection with a property settlement agreement or decree of dissolution of marriage. The termination of a joint tenancy interest is a change in ownership as to the one-third interest transferred, however, the interspousal exclusion applies. C 2/21/2007. (2008–1).

220.0269 Interspousal Transfers. A wife's purchase of her husband's life estate is excluded from change in ownership as an interspousal transfer under Revenue and Taxation Code section 63. C 6/14/2006. (2007–1).

220.0270 Interspousal Transfers. As the result of Statutes of 1981, Chapter 1141, Revenue and Taxation Code section 63, which pertains to interspousal

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transfers, takes precedence over all other change in ownership provisions. And the distribution of a legal entity's property to a spouse or former spouse in exchange for the interest of such spouse in the legal entity, in connection with a property settlement agreement or a decree of dissolution of a marriage or a legal separation, is excluded under section 63(e). LTA 11/6/81 (No. 81/152).

220.0271 **Interspousal Transfers.** Revenue and Taxation Code section 63 applies to transfers between parties in connection with a property settlement agreement and to transfers between former spouses where courts have, through retained jurisdiction, left property disposition matters open or modifiable. Where parties have intended to definitely and permanently settle their property rights and decrees of dissolution have become final, however, section 63 is not applicable, and any subsequent transfers between the parties constitute changes in ownership as transfers of separate property. C 4/14/87; C 3/11/96. (Am. M99-1).

Note: Civil Code section 4800.7 is now in Family Code section 3800.

220.0272 **Interspousal Transfers.** Revenue and Taxation Code section 63 does not apply to transfers between parties to a "common law marriage" when the parties have not entered into a spousal relationship and have not held themselves out as husband and wife. C 5/28/85.

Note: Civil Code section 4100 is now Family Code section 300; Civil Code section 4104 is now Family Code section 308.

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- 220.0273 **Interspousal Transfers.** Persons claiming a transfer is not a change in ownership because of a common law “marital” relationship entered into in California are not eligible for the “interspousal” exclusion contained in Revenue and Taxation Code section 63. The exclusion does apply if it is factually determined that a common law “marital” relationship was entered into in a jurisdiction that recognizes such “marriages” as valid. C 3/9/90.
- 220.0274 **Interspousal Transfers.** A transfer of separately owned property by a husband or wife to a legal entity in which each spouse has an ownership interest does not qualify for the Revenue and Taxation Code section 63 exclusion. Section 63(e) is very specific as to the facts to which it has application and should be limited thereto. C 3/27/87.
- 220.0275 **Interspousal Transfers.** The slightly different language contained in section 2(g) of article XIII A of the California Constitution and Revenue and Taxation Code section 63 should not be considered as conflicting. Any interspousal transfer, not merely interspousal transfers of real property interests, should be excluded from a change in ownership that results in reappraisal. C 8/15/97. (M99–1).
- 220.0276 **Interspousal Transfers.** Any transfers made “in connection with” a property settlement agreement, including post-dissolution transfers (10 years after the divorce) which are based on the terms of the settlement agreement, and post-dissolution transfers resulting from finalizing the former spouses’ property rights under the agreement or decree of dissolution, are excluded from reappraisal under section 63(c), because they are directly related to the terms of the agreement or the conditions of the judgment. C 12/18/97. (M99–1).
- 220.0277 **Interspousal Transfers.** Changes in ownership of real properties do not occur upon the transfers of the properties from Husband (H) and Wife (W), each with one-half community property interests in each parcel, to H’s and to W’s respective living trusts in which H and W are the respective sole present beneficiary (Revenue and Taxation Code section (d)); upon the transfers of the properties from H’s and W’s respective trusts to H’s and W’s separate California corporations wholly owned by each respective trust (Revenue and Taxation Code section 62(a)(2)); and upon the transfers of the properties from H’s and W’s corporations and from another California corporation that is a wholly-owned subsidiary of a corporation in which H and W are the sole shareholders with community property one-half stock interests therein to a new limited partnership formed by H and W (section 62(a)(2)). While the proportional ownership interests in the real property of each of the corporations (via their partnership interests) would be different after the transfers to the partnership than they would be prior to such transfers, proper application of section 62(a)(2) requires a determination of whether the proportionality of H’s and W’s ownership interests would remain the same after the transfers. As the sole present beneficiary of a trust is the sole beneficial owner of the real property for change in ownership purposes, where the owner of real property transfers it to a trust in which he or she is the sole present income beneficiary, the proportional ownership interest in

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the real property remains the same after the transfer for purposes of section 62(a)(2), i. e., the beneficiary is the sole beneficial owner of the property transferred before and after the transfer to the trust. Accordingly, since the proportional interests of H and W in each of the parcels of real property transferred to the newly formed partnership would remain the same after such transfers, section 62(a)(2) would apply to exclude such transfers from change in ownership. C10/30/90. (M99–1).

220.0278 **Interspousal Transfers.** Revenue and Taxation Code section 63 does not apply to a transfer from a husband and a wife to a corporation, a legal entity, wholly owned by wife. The exclusion provided by Revenue and Taxation Code section 62(a)(2) is not applicable since after the transfer, wife held a 100 percent interest in the property through the corporation. For corporate change in ownership purposes, a husband and a wife are treated as separate individuals, and the ownership interest of one spouse in a corporation is not attributed to the other. C 5/14/93; C 2/22/2007. (M99–2; Am. 2008–1).

220.0279 **Interspousal Transfers.** “Distribution of a legal entity’s property to a spouse” in Revenue and Taxation Code section 63(e) means that any transfer *between spouses* made in connection with a property settlement agreement or a judicial decree to finalize their property rights is excluded from change in ownership. This includes transfer undertaken through a partnership redemption allowing one of the spouses to withdraw from the partnership, providing no individual or entity remaining in the partnership gains control. However, this exclusion does not apply to transfers in which the transferee is a spouse’s corporation rather than the spouse. C 6/26/98. (2000–1).

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220.0280 **Intestate Succession.** For change of ownership purposes, the date of death is the date as of which a reappraisal should be made. Likewise, that date should govern when there is a will contest, whether the matter proceeds to a final judgment or is settled by a compromise between the parties. C 4/13/81.

220.0285 **Involuntary Transfers.** Transfers of corporate real properties pursuant to the order of a Bankruptcy Court to a corporation formed for the purpose in exchange for cash, securities (shares of stock), and assumption of liabilities result in changes in ownership. The facts that the new corporation continues the business formerly engaged in by the transferor, that some of the stockholders in both corporations are the same, and/or that the transfer was pursuant to a court ordered Chapter 11 reorganization are immaterial. C 8/4/87.

220.0290 **Irrevocable Inter Vivos Trust.** When property is placed in an irrevocable inter vivos trust, it should be reappraised when the trust is terminated to the extent that real property is transferred to a person who did not have a present beneficial interest during the time the trust was in existence. This result should obtain except as regards a beneficiary who has a present beneficial interest that was appraised at the time the trust was created. In such a case, the present beneficiary has equitable title and obtains mere legal title on the termination of the trust. This should be distinguished from a holder of a future interest since this future interest was not subject to reappraisal when the trust was created. C 4/9/80.

220.0295 **Joint Tenancy.** A joint tenancy creates undivided interests in property, with each joint tenant owning a fractional or percentage interest. The creation, termination, or transfer of such an interest is a change in ownership and results in a reappraisal only of that interest, except that (1) the creation or transfer of a joint tenancy interest is not a change in ownership where the transferor remains as a joint tenant after the transfer; (2) the termination of an "original transferor's interest" by operation of law (upon death) is not a change in ownership where the interest is transferred to the remaining original transferor(s); and (3) the termination of an interest of one other than an original transferor is not a change in ownership where the interest is transferred to an original transferor or to all remaining joint tenants. C 4/15/87.

220.0296 **Joint Tenancy.** The definition of "original transferor" as "one or more persons who hold joint tenancy interests in property immediately after a complete turnover of the previous original owners occurs," refers only to the last paragraph of Revenue and Taxation Code section 65(a) and indicates that when all original transferors have terminated their interests, those persons who remain as joint tenants will be considered original transferors for the next series of transactions.

The definition does not affect the law as found in section 65, which provides that in order to be subject to the provisions of section 65, there first must be a section 62(f) exclusion. Without a section 62(f) exclusion as the foundation, the exclusions of section 65 simply cannot come into play, and the interest transferred will always be reappraised. C 3/11/80.

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220.0297 Joint Tenancy. When a change in ownership in a joint tenancy occurs, only the interest or portion transferred will be reappraised, except that the creation or transfer of a joint tenancy interest where the transferor is among the joint tenants after creation or transfer is not a change in ownership. The transferor(s) in such an excluded transfer shall be an “original transferor” for purposes of determining the property to be reappraised on subsequent transfers, i.e., termination of an original transferor’s interest or termination of an interest of other than an original transferor. LTA 12/9/80 (No. 80/180).

220.0298 Joint Tenancy. A mother’s transfer of property to herself and to her son as joint tenants does not constitute a change in ownership because the transferor creates a joint tenancy in which she is one of the joint tenants (Revenue and Taxation Code section 65(b)). If the joint tenants later take title to the property as tenants in common, there is a change in ownership of the 50 percent undivided interest in the property acquired by the son. Although Property Tax rule 462(c)(2)(D) provides an exclusion to the basic principle that the transfer of a joint tenancy interest is a change in ownership of the interest transferred, the exclusion applies only to joint tenancies other than those described in rule 462(c)(2)(A), and the mother’s transfer of the property to herself and to her son was a transfer to a joint tenancy of the kind described in rule 462(c)(2)(A).

If instead the mother as joint tenant later creates a tenancy in common by revocable deed, to become effective upon her death, she will apparently create the equivalent of a life estate in joint tenancy with a vested future interest as a tenant in common. Since Revenue and Taxation Code section 60 requires the transfer of a present interest in real property for a change in ownership to occur, there would be no change in ownership at that time. Upon the transferor’s death, however, the future interest would become a present interest and effectively terminate the joint tenancy; the transferor’s estate or heirs and the son would own the property as tenants in common (*Riddle v. Harmon*), 102. Cal.App.3d 524; and there would be a change in ownership of both the transferor’s 50 percent undivided interest in the property as the result of her death and of the son’s 50 percent undivided interest therein as the result of his taking title to the property as a tenant in common. C 9/11/85.

220.0299 Joint Tenancy. The acquisition of 100 percent of the stock of a corporation by a husband and wife, as joint tenants, does not constitute a change in control under Revenue and Taxation Code section 64(c). As joint tenants, each party owns 50 percent of the stock and thus, neither has obtained control of the corporation. Additionally, there is nothing to indicate that the Legislature ever intended to treat joint tenancies as legal entities. C 9/20/83; C 1/6/2000. (Am. 2000–2).

220.0300 Joint Tenancy. The rebuttable presumption of Revenue and Taxation Code section 65(e), that for joint tenancies created on or before March 1, 1975, each joint tenant holding an interest in property as of March 1, 1975, is an “original transferor”, is overcome where controverting evidence is available. Such evidence precludes acceptance of the presumption/inference to be made as established fact. C 4/20/84.

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220.0301 **Joint Tenancy.** The creation of a joint tenancy by the surviving original transferor of a former joint tenancy which includes as a joint tenant the spouse of a now-deceased original transferor is not within the Revenue and Taxation Code section 65(b) exclusion, unless the spouse was a tenant in the original joint tenancy. C 4/17/92.

220.0302 **Joint Tenancy.** A mother and son obtained from the mother's parents title to property as equal joint tenants in August 1972. The mother died in 1982, and the son became sole owner by right of survivorship. Fifty percent of the property was subject to reappraisal since the survivor was not a transferor and therefore, could not qualify as an "original transferor."

Since mother and son obtained title as joint tenants in 1972, the presumption in Revenue and Taxation Code section 65(e) that they were "original transferors" was applicable, but it was rebutted by the fact that the deed making them joint tenants did not list them among the transferors. C 7/10/91.

220.0303 **Joint Tenancy.** When a married couple and a third person hold title to property as joint tenants, and one of the spouses records a declaration that all real property owned by him/her is community property regardless of the manner in which title is held, the joint tenancy is terminated as to the recording party. The remaining owners continue to hold their two-thirds interests in joint tenancy. The one-third community property interest is owned by the husband and the wife but does not result in reappraisal since it is merely a change in the manner of holding title. C 4/10/85.

220.0305 **Joint Tenancy.** A husband, a wife, and a third person hold title to real property as joint tenants. The husband and wife are "original transferors," and the third person is "other than an original transferor." The husband and wife then record a document stating that their joint tenancy interests are held as community property. The joint tenancy is, thereby, terminated; and the third person holds his interest as a tenant in common. The third person's interest is subject to reappraisal as a change in ownership, unless an exclusion, such as parent-child exclusion, applies. C 1/19/94. (M99-1).

220.0306 **Joint Tenancy.** The transfer of real property from a husband and wife to themselves and a third person as joint tenants is not a change in ownership under Revenue and Taxation Code section 65(b) because the transfer creates a joint tenancy interest and after such creation, the transferors are among the joint tenants.

The transfer of real property from a husband and wife and a third person as joint tenants to the same three persons as community property cannot be characterized as community property under Civil Code section 687, because the third person cannot take title to property as community property since he or she is not part of the marital community. It is logical to interpret this transfer as from husband and wife and a third person, as joint tenants, to husband and wife, as community property, and to the third person, an unmarried man or woman. The third person's interest must be considered to be a tenancy in common interest if it is not indicated to be a joint tenancy interest or a partnership interest (Civil

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Code section 686). Revenue and Taxation Code section 65 indicates that the termination of the third person's one-third joint tenancy interest, now the tenancy in common interest, is a change in ownership unless one of the statutory exclusions applies. C 5/15/87. (M99–2).

| Note: Civil Code section 687 is now Family Code section 760.

220.0307 Joint Tenancy. The exclusions provided by Revenue and Taxation Code sections 65(c) and (d) relate by their own definitions only to situations described in section 65(b), transfers involving original transferors. If there are no original transferors at the time a joint tenancy is created, section 65(a), which provides that the creation, transfer or termination of a joint tenancy is a change in ownership, is applicable. C 11/3/86. (M99–2).

220.0309 Joint Tenancy. A transfer from X, Y, and Z, as joint tenants, to X and Y, as joint tenants, is a one-third change in ownership, unless either X or Y or both X and Y are original transferors as a result of a prior transfer. C 1/12/2005. (2005–2).

220.0310 Joint Tenancy. A trust can be a joint tenant under Civil Code section 683(a), which specifies that a joint tenancy may be created by grant or devise to trustees as joint tenants. For property tax purposes, a joint tenant's interest can be transferred into a revocable trust without severing the joint tenancy if the other joint tenant is the present beneficiary. Under these circumstances, the joint tenants retain the present beneficial interest, the right of survivorship remains intact, and the trustee receives only bare legal title. The trustee never holds the present beneficial interest in the trust property, even though he or she has legal title and the power to sell. C 5/19/2005. (2006–1).

220.0315 Joint Venture. The contribution of property to a joint venture gives rise to reappraisal of the entire property since the joint venture is a separate entity and since the contributor did not retain the same proportional interest in the property after the transfer as required by Revenue and Taxation Code section 62(a). C 12/22/81.

220.0320 Land Sale Contract. In the case of the typical contract for the sale of land, the vendor retains bare legal title as a security interest in the property, and the vendee acquires equitable title to the property and possession thereof as well. Such results in a transfer of a present equitable interest in the property upon the execution of the contract and a transfer of the present beneficial use of the property at the same time, and where the value of such interest is substantially equal to the value of the fee interest in the property, a change in ownership of the property occurs. C 5/9/84.

220.0321 Land Sale Contract. To constitute a binding contract for the sale of land, the material terms must be agreed on between the parties and nothing material to the validity of the contract left to future settlement.

Where ten acres to be transferred are not identified and no deed relating to the exact ten acres will be executed until final payment, and where the buyer has no right to possess the property until final payment, a change in ownership does not

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occur until the buyer has paid the last installment and the seller has performed his obligation of identifying and dividing the parcel. C 1/24/80.

220.0323 Lease Option. A lease for a term of less than 35 years to mine sand and gravel constitutes a change in ownership of the mineral rights under Revenue and Taxation Code section 61(a). However, if a lease option is executed, no change in ownership will occur until the option is exercised. A true option to lease is not a change in ownership because the option holder acquires no beneficial use of the property until the option is exercised. C 6/19/2006. (2007-1).

220.0324 Lease Option. A ground lease for a term of 99 years which includes an option for the lessor to terminate the lease is a change in ownership upon the execution of the lease. The lessor's option to terminate the lease does not diminish the change in ownership consequence following the creation of a leasehold interest for a term of 35 years or more at the time of the lease's execution. C 2/7/2007. (2008-1).

220.0325 Leases. A portion of a shopping center was leased to a major tenant for a term of 25 years plus two options to extend for successive periods of ten years each. During the twenty-first year of the original lease, the parties renegotiated and executed a modified lease which was substantially different than the original lease, so much so that the original lease should be considered terminated, resulting in a change in ownership.

The new lease was for seven years, with 20 years of optional extension periods plus an additional 20 years if the lessee agreed to construct certain improvements. During the fourth year of this lease the property was sold by the owner/lessor. It is arguable that because of the economic considerations the lessee will never construct the improvements required to obtain the 20 year extension.

The fact that a lease option is not likely to be exercised is not a basis for ignoring its existence; the law only requires that there be such an option. Including this 20 year period results in a leasehold of more than 35 years and thus, a change in ownership. When the property was sold, the portion subject to this new lease would be excluded from the remainder of the center that changed ownership on sale. C 5/10/89.

220.0326 Leases. When a lease of multiple properties with an original term of more than 35 years but currently with less than 35 years remaining is acquired by the lessor, the merger of the lessor's interest and the lessee's interest terminates the lease, and a change of ownership occurs by virtue of the termination of the lease as provided by Revenue and Taxation Code section 61(c)(1). C 2/15/90.

220.0327 Leases. Whether or not an "Amendment to and Restatement of Lease" constitutes a termination of the pre-existing lease of more than 35 years is a question of fact. If the essential terms of the original lease are materially and fundamentally changed, a termination of the lease and therefore, a change in ownership has occurred as provided by Revenue and Taxation Code section 61(c)(1). C 9/26/90.

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220.0328 **Leases.** The transfer of a life estate that is subject to lease with a remaining term of less than 35 years is a change of ownership requiring reappraisal, unless the transferee qualifies for the interspousal or parent-child exclusion. C 4/13/92.

220.0329 **Leases.** The transfer of the primary ownership interest in a lease constitutes a change in ownership for appraisal and assessment purposes. The mere passage of time which reduces the remaining term of a lease originally for more than 35 years to, for example, 30 years results in a shift of the primary ownership interest in the lease back to the lessor. However, since there has been no transfer by the lessor, no change in ownership has occurred. C 12/24/91.

220.0330 **Leases.** The apparent legislative purpose of defining who is considered to be the owner of an interest in real property subject to a lease is to eliminate the need to value leasehold interests and reversionary interests separately. By considering the lessor or lessee to be the owner of the entire property at any given time, namely, less than 35 years vis-à-vis 35 years or more, a transfer by the lessor, when the owner, or by the lessee, when the owner, will result in a change in ownership of the entire property. C 6/22/82.

220.0331 **Leases.** A court order terminating a 55-year lease having 50 years remaining at the time and returning possession of the real property to the lessor results in a change in ownership of the property. C 7/9/87.

220.0332 **Leases.** An assessor should look to the original term of the lease including written renewal options. If a lease term for less than 35 years is, before expiration, renewed or extended, and if the remaining term at the time of renewal or extension plus the renewal or extended term totals 35 years or more, there is a change in ownership of the entire property at that time.

If a lease term for more than 35 years is renewed or extended while more than 35 years of the lease term remain, the lessee is still considered to be the owner of the property and there is no change in ownership upon renewal or extension. If a lease term for more than 35 years is renewed or extended while less than 35 years of the lease remain, and if the remaining term at the time of renewal or extension plus the renewal or extended term remains less than 35 years, the lessor is considered to be the owner of the property and there is no change in ownership upon renewal or extension. There is a change in ownership at the end of the renewed or extended term, however, since there is, at that time, a termination of a leasehold interest which had an original term of more than 35 years. C 7/13/81; C 12/9/88.

220.0333 **Leases.** An instrument that creates a lease that “shall not exceed the lifetime of the oldest presently living descendant of Her Majesty Queen Elizabeth, II of England, plus twenty-one (21) years . . .” and “. . . covers and includes all the Lessor’s right, title and interest in and to certain patented mining claims . . .” results in the granting of a life estate and is a change in ownership. C 4/12/84.

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220.0334 **Leases.** A nonprofit corporation owns land and a clubhouse which its members use for social and recreational purposes. A membership can be purchased for approximately \$1,000. Some members own cabins on the property, but more have written or oral leases. All members pay fees sufficient to cover immediate expenses. Individual cabins can and have been sold, at which time the assessor has reappraised the cabin and a one acre homesite. The land is assessed to the corporation and the cabins are assessed on the unsecured roll to the individual owners.

It appears improper to conclude that the cabin owners have land leases or that the presumption concerning lease options contained in Revenue and Taxation Code section 61(c) is applicable. The land interests the cabin owners have appear sufficiently similar to life estates or interests held in cooperative housing corporations to qualify as changes in ownership of real property when transferred with a cabin. The transfer of a membership interest exclusive of the ownership of a cabin would also qualify for reappraisal; however, if the value of the interest as

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indicated by the membership purchase price is less than five percent of the value of the total property and less than \$10,000, Revenue and Taxation Code section 65.1 would apply. C 6/30/88.

220.0335 Leases. If leases for more than 35 years held by sublessees are not terminated when their lessor forfeits his lease back to the property owner/lessor, they should be regarded as the primary owners for change-in-ownership purposes. Since their interests are still as lessees for a term of more than 35 years, no reappraisals should occur. C 9/15/89.

220.0336 Leases. Special use permits issued by the U.S. Forest Service pursuant to federal law are defined in 36 Code of Federal Regulations 251.51 as “a special use authorization which provides permission, without conveying an interest in land, to occupy and use National Forest System Land . . .”. Therefore, sales of the land to people who have built homes on the land constitute changes in ownership. The special use permits are not leases. Thus Revenue and Taxation Code section 61(c) does not have any application. C 11/3/88.

220.0337 Leases. An extension(s) granted to a lessee(s) holding a long term lease(s) does not result in a change in ownership if, upon the granting of the extension, the lessee(s) has the right to use the property in the future for less than 35 years. For example, the lessee with a 29 year lease may receive several 5 year extensions and not subject the property to reappraisal if the extensions are granted at intervals that always keep the remaining term at less than 35 years. C 9/16/87.

220.0338 Leases. Property subject to a lease (with options to extend) for a period in excess of 35 years does not undergo a change in ownership when the right to extend is exercised. Further, a lease agreement contained in several documents when restated in a single document does not result in a change in ownership if the lease is not terminated. Upon receipt of a copy of the restated lease agreement, the assessor may request a change in ownership statement, and if one is not received, he or she may impose the Revenue and Taxation Code section 482 penalty, notwithstanding a change in ownership has not occurred. C 11/18/85.

220.0339 Leases. Vacation or secondary homes located on land leased from a state-assessee should be assessed to their owners rather than to the state-assessee. When the land leases are transferred for a period of less than 35 years, no change in ownership occurs. Whether or not improvements change ownership when any one of the subleases is transferred depends on the terms of the leases and subleases. C 9/4/85.

220.0340 Leases. Property used, even if not owned, by a state-assessee in its utility activity is subject to state assessment and is not subject to the provisions of article XIII A of the California Constitution. Therefore, the lease of land to a state-assessed public utility for use in its utility activity should not result in a change in ownership assessment by a local assessor. C 3/19/86.

220.0341 Leases. Privately owned land leased to a governmental agency for 35 years or more results in a change in ownership for reappraisal purposes but does

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not result in tax exemption unless the use of the land by the agency qualifies it for exemption. C 12/18/81; C 6/15/95. (Am. M98—2).

220.0342 Leases. A right of first refusal to extend a lease is not a renewal option since it merely gives the lessee a right to a new term conditioned upon the lessor's willingness to again lease the property at the end of the original term, not an absolute right to a new term. Thus, if a lease term for less than 35 years exists at the time the property is sold or transferred, there is a change in ownership of the property even though the lease provides for a right of first refusal. C 1/5/87.

220.0343 Leases. Only that portion of a property subject to a Revenue and Taxation Code section 61(c) lease or transfer shall be considered to have undergone a change in ownership, e.g., a qualifying lease of one shop in a shopping center requires reappraisal of only the shop.

When real property subject to a lease changes ownership, the total reappraised value should include both the leasehold and the leased fee, i.e., the property should be valued as if unencumbered by a lease. LTA 2/19/80 (No. 80/25).

220.0344 Leases. A lease of department store premises in a shopping center constituting a change in ownership does not bring about a change in ownership assessment in the parking lot also. The lease does not afford the lessee a sufficient property interest in the parking lot to constitute a change in ownership thereof. C 1/14/83.

220.0345 Leases. The purchase by a lessee of the lessor's interest in a lease that originally was and is at the time of purchase for a term of more than 35 years is not a change in ownership. C 3/30/90.

220.0346 Leases. The transfer by a lessor of its interest in a lease with a remaining term of 35 years or more to the lessee or another party is not a change in ownership. Likewise the transfer by the lessee of its interest in the lease only on the condition that the lessor immediately convey free and clear title back to the lessee would not be a change of ownership. The lessee would retain the present beneficial use of the property and the lessor's conveyance would be of bare legal title only. C 12/16/93.

220.0347 Leases. When a property subject to a lease of 35 years or more reverts to the lessor before the term of the lease has expired, the assessor must determine if the lease has been terminated or if the parties have rescinded the lease. If a termination has occurred, a new base year value must be established; whereas if there has been a rescission, the base year value at the time the lease was executed, properly factored, would be enrolled. In neither instance would taxes due for the time the lease was in effect be subject to refund. C 8/21/96. (M99—2).

220.0348 Leases. A lessee's assignment of a land lease on property eligible for the homeowner's exemption constitutes a change in ownership since Revenue and Taxation Code sections 61(c)(2) and 62(g) contain conclusive presumptions that the lessee has the right to renew its lease for an additional term of at least 35 years, whether or not that renewal option exists in any contract or agreement. Due

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to these same conclusive presumptions, however, the sale of the lessor's interest in taxable real property subject to such a land lease is not a change in ownership. C 1/24/97. (M99-1).

220.0348.005 Leases. Revenue and Taxation Code section 61(c) presumes that homes eligible for the homeowners' exemption that are on leased land have a renewal option of at least 35 years on the lease of that land, whether or not a renewal option exists in any contract or agreement. If the homeowner/lessee purchases the land from the lessor, there will be no change in ownership of the land under the provisions of Revenue and Taxation Code section 62(g) and Property Tax Rule 462.100(b)(2)(A) because the remaining term of the lease is presumed to be 35 years or more. C 11/30/2004. (2005-2).

220.0349 Leases. Upon the sale or transfer of a home on leased land, if that home is eligible for the homeowners' exemption, the conclusive presumption of Revenue and Taxation Code sections 61(c) and 62(g) applies, with the result that the land lease is presumed to be for a term of 35 years; and a change in ownership of the land as well as the home occurs. Where there is no sale or transfer under Revenue and Taxation Code section 60, however, but the home merely becomes eligible for the homeowners' exemption and the conclusive presumption would apply, there is no change in ownership of the home or the land.

Hence, two separate events must occur in order to trigger reappraisal of such leased land: first, the home must be eligible for the homeowners' exemption (so that the conclusive presumption applies); and secondly, there must be a transfer of the home which meets the change in ownership definition under section 60. C/1/15/99. (2000-1).

220.0349.005 Leases. The installation of a manufactured home, eligible for the homeowners' exemption, on a permanent foundation on leased land results in a change in ownership of the land, because the lease is conclusively presumed to have written renewal options of at least 35 years under Revenue and Taxation Code section 61, subdivision (c)(1), even if the lessor and lessee entered into a month-to-month tenancy or the executed lease agreement specifically provides a lease term of less than 35 years. Similarly, the transfer of a manufactured home eligible for the homeowner's exemption, and the assignment of the leasehold interest in the land on which the manufactured home is affixed on a permanent foundation results in a change in ownership.

However, if a manufactured home affixed on a permanent foundation is not eligible for the homeowners' exemption, the creation or assignment of a leasehold interest in the land for a term of less than 35 years does not result in a change of ownership because the presumption under section 61, subdivision (c)(1), does not apply. C 12/22/2004. (2005-2).

220.0350 Leases. A lease agreement for a term plus extension options of less than 35 years, but with a "conditional lease term extension" provision which, if the conditions were to occur and the option were to be exercised, would result in a total lease term exceeding 35 years, does not, upon execution of the lease, result in a change in ownership of the real property subject to the lease. At the inception

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of a lease agreement that includes a conditional option, the term of the conditional option should not be included when computing the lease term for purposes of change in ownership. However, upon the occurrence of any of the stated conditions, the conditional option in the lease becomes effective and, at that time, the term of the conditional option should be added to the lease term remaining. If that total period exceeds 35 years, then a change in ownership results at that time; and the entire property subject to the lease should be reappraised. C 2/18/99. (2000–1).

220.0351 Leases. When a lease is amended to extend the lease term and the extension is pursuant to a lease amendment and not the exercise of an option granted in the original lease, the new lease term is then measured by the 35-year test to determine if beneficial ownership of the real property has changed. When a lease with an original term of 30 years is amended to extend the term an additional 10 years, a change in ownership will occur if the remaining term of the original lease plus the 10-year extension is more than 35 years.

A property is leased for a term of 40 years with no options. After 6 years, the lease is amended to extend the term an additional 10 years, resulting in a remaining term of 44 years. Since the lease term has been extended from 34 years to 44 years, primary ownership of the property has shifted from the lessor to the lessee because a new leasehold interest of more than 35 years has been created. Thus, a change in ownership of the real property has occurred. C 12/24/91. (2000–1).

220.0352 Leases. A lease with a term longer than 35 years, which includes an option for the lessee to terminate the lease within 3 years if lessee (1) has not obtained final, nonappealable governmental approvals regarding site and building plans and environmental reports or (2) is unable to obtain satisfactory financing for construction of the project, results in a change in ownership at the time the lease is executed. The lessee's option to terminate the lease does not diminish the creation of a leasehold interest for a term of 35 years or more at the time of the lease's execution as (1) the duration of the lease term expressed in the agreement was for a term of 35 years or more, (2) the beneficial interest in the property passed to the lessee, and (3) the obligations created by the option to terminate do not diminish the value of the lessee's equity in the property. C 3/17/2000. (2001–1).

220.0353 Leases. The tenant executed a lease of a building pad site in a shopping center for a term of 35 years or more with a nonexclusive easement over the common area, including the parking lot and parking structures. The tenant does not have a legal right to possess and use the common area to the exclusion of all others, as would a fee owner. Under the lease terms, the nonexclusive easement over the common area does not result in portions of the common area being "reserved as an appurtenance" to the building pad site, as required by Revenue and Taxation Code section 65.1(b). Tenant cannot be reassessed for a change in ownership for a portion of the shopping center's common area, including the parking lot and parking structures. However, section 65.1(b) does not preclude

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the tenant's pad site, upon the change in ownership, from being valued to reflect the amenities and the enhancement afforded by the common areas, nor prevent the common areas from being reassessed to the landlord for the value of new improvements. C 1/8/2001. (2002-1).

220.0354 Leases. A financing lease is a type of purchase agreement whereby the seller (vendor) accepts periodic payments for the purchase price while retaining title to the property for security purposes. Possession of the property transfers to the lessee without full legal title until payment of the purchase price or on a predetermined date. The true owner of the property subject to a financing lease is considered to be the lessee, even though legal title to the property remains in the lessor for purposes of security, if at the time of entering into the agreement: (1) the parties have a fixed intention to buy and sell; and (2) the entire obligation to pay arises, payments being on a deferred basis; or (3) the lessee is under an economic compulsion to exercise the purchase option.

A "synthetic lease" is a financing agreement used to convey a security interest in real property in exchange for capital. A synthetic lease may be considered a finance lease if it satisfies the above elements. C 5/24/2005. (2006-1).

220.0355 Leases/Subleases. If property is subject of a lease for a term of 35 years or more and a sublease of the same property is for a term of 35 years or more, the transfer of the primary lease is not a change in ownership because of the continued existence of the sublease. C 11/9/90.

220.0356 Leases/Subleases. A "pass-through" sublease is, in effect, an assignment of all the rights and obligations of the lessee/sublessor in the property to the sublessee. Though written as a sublease, all the rights and interests of the former lessee "pass through" to the new sublessee. The former lessee has nothing left except for one minimal right or interest, the right to hold the property one day longer than the sublessee, which distinguishes a sublease from outright assignment. Since the former lessee has, in effect, transferred the full value of its leasehold estate, the transfer is, *in substance*, an assignment, though, *in form*, it reads like a sublease.

The termination of a lease and sublease that have original and remaining terms, respectively, of 35 years or more results in a change in ownership pursuant to Revenue and Taxation Code section 61(c)(1), absent an applicable exclusion. However, the termination of such a lease and sublease in which the sublessee is a 100 percent-owned subsidiary of the owner of the property, resulting in the "return" of the lease/sublease to the owner, is excluded from change in ownership by Revenue and Taxation Code section 64(b). C 10/11/2000. (2002-1).

220.0360 Leasehold Improvements. When a 35 year lease provides that lessee-installed improvements shall at the expiration or earlier termination of the lease become the property of the lessor, a question arises as to whether or not the improvements have changed ownership if the lessor sells the property and the new owner negotiates a new lease. Since the sale would be of property subject to a lease with less than 35 years remaining, the structure and the tenant

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improvements would both be subject to reappraisal per Property Tax rule 462(f)(1)(B)(i), whether or not the “improvement ownership” clause became operative. The ownership of the improvements would turn on the actual intent of the parties, but would be meaningful for assessment purposes only as regards the billing of the correct assessee for the property that assessee owns. C 4/2/87.

- | 220.0364 **Life Estate—Personal Lifetime Right of Occupancy.** The termination of a retained life estate (that was previously excluded from change in ownership) by execution of a grant deed and a personal lifetime right of occupancy agreement is a change in ownership. Property Tax Rule 462.060 clearly provides that a subsequent transfer of a retained life estate by the transferor to a third party is a change in ownership. While a lifetime right to occupy property may not be a transfer of present beneficial interest, the transfer or termination of the life estate results in a change in ownership. C 1/3/2003. (2004-1).

220.0364.005 **Life Estate—Personal Lifetime Right of Occupancy.** One joint tenant conveys her joint tenancy interest in real property to the other joint tenant and pursuant to a separate written agreement, the transferor retains a personal lifetime right of occupancy in the residence until her death. Under this agreement, the transferee may not sell or transfer the residence during the transferor’s lifetime; the transferor is responsible for the mortgage payments, taxes, utilities, maintenance and other costs associated with the residence during her lifetime; the transferee may occupy the residence or rent the residence to a third party only if the transferor is absent from the residence due to the need to move to a hospital or nursing home; if the residence is rented, the transferor is to receive the net proceeds from the rental of the residence.

The transferor retains the present beneficial use of her interest in the property, which includes the right to occupy real property or the right to receive the income produced by real property. Therefore, the transfer did not result in a change in ownership because the transferor’s retained interest is equivalent to a life estate in the property. C 8/18/2004. (2005-2).

220.0365 **Life Estate.** No change in ownership of real property occurs when an owner transfers the property to an exempt park district but retains a life estate. As the owner is deemed to be the owner of the fee until termination of the life estate, article XIII A, section 2(b) of the California Constitution relating to declines in value is not applicable because the value of the fee itself has not declined. Under Revenue and Taxation Code section 61(f), a change in ownership occurs when the life estate terminates and the right to possession or enjoyment vests in the remainderman. C 4/13/81.

220.0366 **Life Estate.** A “lease” manifesting an intention by the lessor/transferor to pass the right to possess, use, or enjoy property for the period of the transferee’s life or the life of another creates a life estate which results in a change in ownership at the time of transfer. C 4/12/84.

220.0367 **Life Estate.** The reservation of a life estate to the grantor of a revocable grant deed is within the Revenue and Taxation Code section 62(e) exclusion. C 6/9/93.

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220.0368 Life Estate. Pursuant to Property Tax rule 21(a) and rule 462(e), a transfer of real property to a tax-exempt governmental entity with a reservation of a life estate does not result in the creation of a taxable possessory interest or a change in ownership. Thus, the taxable value of the property must be determined by comparing the adjusted base year value of the parcel (not the life estate itself) to the market value of the parcel. The value must be established without regard to the conveyance to the governmental agency, any use limitations imposed on the owner of the life estate, or the fact that the life estate because of its limited duration declines in value each year. C 11/2/89.

220.0369 Life Estate. The granting of a life estate constitutes a change in ownership, even though the estate is to terminate upon the happening of specified conditions, such as the failure of the life tenant to reside on the property. The execution of a grant deed by the life tenant which is to take effect on his or her death is of no significance since it is not presently operative and would, in any event, be an attempt to transfer legal title which is held by the grantor of the life estate. C 6/30/83. (Am. M99-1).

220.0370 Life Estate. A person may disclaim a gift of a life estate created in a will if he or she files the appropriate document as required by Probate Code section 282 et seq. The failure to timely file a disclaimer results in a change in ownership as of the date of the decedent's death.

If the decedent were the parent of the owner of the remainder interest, the parent/child exclusion would apply to the transfer of that interest since it is received from the decedent, not the holder of the life estate. C 5/23/89.

220.0372 Life Estate. The transfer of a life estate by a life tenant during his or her life other than to a spouse or eligible child constitutes a change in ownership. The termination of a life estate because of the death of the life tenant is also a change in ownership, unless the remainderman is a spouse or eligible child of the creator of the life estate and remainder interest. C 4/13/92.

220.0372.005 Life Estate. Mother owned real property. At her death, the provisions of her will created a life estate in the property for her daughter. Upon termination of the life estate, the remainder interest would pass 50 percent to the daughter and 16.66 percent to each of the mother's three sons. After the mother's death, a parent-child claim for exclusion was properly filed thereby excluding the creation of the life estate in the daughter from change in ownership. Subsequently, the four siblings formed a corporation in which the four owned all the outstanding shares of the corporation. The daughter quitclaimed her life estate and her 50 percent remainder interest in the property to the corporation, and the three sons quitclaimed their remainder interests in the property to the corporation.

As the life tenant, the daughter was the primary owner of the entire property because a creation of a life estate meets the definition of change in ownership under Revenue and Taxation Code section 60. The three sons did not hold primary ownership interests in the property because they held future interests, not present interests, that vested upon termination of the life estate. Because the daughter owned a 100 percent interest prior to the transfer and a 50 percent

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interest after the transfer, the transfer to the corporation was not proportional and, thus, resulted in a 100 percent change in ownership. C 2/2/2005. (2006-1).

220.0372.010 Life Estate. Where a life estate created for the benefit of a child terminates as a result of the death of the child life tenant, the transfer to the surviving children is from the parent/transferor of the remainder interest, not from the life tenant. Since the parent is the transferor, the parent/child exclusion and/or the grandparent/grandchild exclusion may apply to exclude the re-transfer from change in ownership provided that all of the filing requirements are met. C 3/6/2006. (2006-2).

220.0372.015 Life Estate. A life estate interest may be terminated by the life tenant during his lifetime. However, when a life estate is transferred to the owner of the remainder interest in a property, the life estate ceases to exist and is merged into the remainder interest. The doctrine of merger stands for the proposition that whenever a greater estate (remainder fee interests) and a lesser estate (life estate) in the same parcel of real property are held by the same person, without an intermediate interest or estate, the lesser estate generally merges into the greater estate and is terminated.

Upon the grandmother's death, an irrevocable generation-skipping transfer trust was created for the lifetime benefit of grandfather. Upon grandfather's death, their son became the lifetime beneficiary of the trust, with a remainder interest in the son's child. The trust owns White Acre. Child owns Black Acre. Trust wants to transfer White Acre to Child in exchange for Black Acre.

If Son, the present beneficiary of the trust, transfers his life estate interest in White Acre to child, the owner of the remainder interest, this transfer would terminate the son's life estate interest and cause it to merge into Child's remainder interest. Child's remainder interest in White Acre would become a vested present beneficial ownership interest that Child will have received from his parent, not the trustor (grandmother). This transfer may be excluded from change in ownership as a parent-child transfer, provided the other requirements set forth in Revenue and Taxation Code section 63.1 are met. Similarly, the transfer of Black Acre from child to a trust in which parent is the beneficial owner may be excluded from change in ownership as a parent-child transfer. C 11/7/2006. (2008-1).

220.0374 Life Estate. When a "lease" specifies two seemingly contradictory terms—(1) the life of lessee plus 90 days, and (2) an ending date of March 31, 2031 (a term of 34 years and 11 months), the intent of the parties must be analyzed. If the language imposing conditions places burdens on the life tenant which do not invalidate the grant of a life estate and the term of the estate is otherwise indefinite, then the term of the estate survives until the life tenant's death and hence, indicates the creation of a life estate. However, where the language of the creating instrument manifests an intention by the parties to create a landlord/tenant relationship rather than a life estate, and the term of the estate is definite, specifying a date as well as breach provisions for the termination or

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forfeiture of the estate even though the life tenant is still alive, then these and other provisions indicate that the parties established a leasehold estate, rather than a life estate. C 7/17/98. (2000-1).

220.0375 Limited Liability Company. For change in ownership purposes, members' ownership interests in a limited liability company, measured by the members' capital and profits interests, are the members' interests in capital and profits, the same as is the case for partners' ownership interests in partnerships. Therefore, a transfer of interests in real property to a limited liability company is excluded from change in ownership pursuant to Revenue and Taxation Code section 62, subdivision (a)(2), if the transferors receive interests in capital and profits as members of the limited liability company proportional to their real property interests prior to the transfer. C 4/15/98. (M99-2).

220.0375.005 Limited Liability Company. A transfer of real property from a limited partnership, comprised of one general partner and one limited partner where each holds a 50 percent partnership interest, to a limited liability company (LLC) where the general partner and the limited partner, the only members of the transferee LLC, each hold a 50 percent LLC interest, would be excluded from a change in ownership under Revenue and Taxation Code section 62(a)(2), assuming this is not a statutory conversion or merger pursuant to Corporations Code section 15611. If it is, there is no transfer, and therefore, no change in ownership. C 9/9/99. (2001-1).

220.0375.010 Limited Liability Company. Real property is owned by LLC-1. LLC-1 has two individual members, A (0.95%) and B (0.05%) and an entity member, LLC-2 (99%), which in turn is wholly owned by A (95%) and B (5%). In the first scenario, LLC-2 is transferring its 99% interest in LLC-1 to A and B in the same percentages as the percentages of A and B's pre-transfer interests in both entities-95% to 5%. After the transfer, A will directly own 95% of LLC-1 and B will directly own 5% of LLC-1. In the second scenario, LLC-2's 99% interest in LLC-1 is transferred to a new entity, LLC-3, in which A and B are the only members, retaining their same proportional interests. Transfers of interests in legal entities are excluded from change in ownership under Revenue and Taxation Code section 62(a)(2) as long as the interests transferred are in exactly the same proportion. (See Property Tax Rule 462.180(d)(4).)

Where the exclusion in section 62(a)(2) applies to a transfer that would otherwise trigger a Revenue and Taxation Code section 64(c) change in control, the section 62(a)(2) exclusion takes precedence because the transfers are proportional with the underlying ownership interests of the members or partners in the entity which owns the real property remaining the same. C 11/19/99. (2001-1).

220.0375.015 Limited Liability Company. A single member limited liability company (LLC) must be treated as a separate legal entity for property tax purposes, with transfers of membership interests in the LLC subject to the provisions of Revenue and Taxation Code section 64(a) et seq. Similarly, transfers of real property to or from a single-member LLC are changes in

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ownership of the interests transferred, unless the transfers are excluded under a specific statutory provision. Even though the single member LLC may be *disregarded* for federal tax reporting purposes and its profits and losses reported on the individual member's tax return, its affairs are governed by all of the formalities imposed on all other legal entities (e.g., corporations, partnerships, etc.). Its articles of organization and its operating agreement determine who the members are, the extent of the interests they own, the activities it conducts, and the terms of its future dissolution. An LLC acquires its separate existence as a legal entity once its articles of organization are filed and its operating agreement executed. How its federal or state income taxes are reported on various returns has no bearing on the legal recognition of a properly formed LLC (single member or otherwise). C 2/15/2000. (2001–1).

220.0375.020 Limited Liability Company. Husband and wife are the sole present beneficiaries of their living trust, which is the record owner of real property. Title to the property will be transferred to a limited liability company owned by the trust, in exchange for which the trust will receive 100 percent of the capital and profits interests of the limited liability company. To determine the present beneficial ownership of that property and whether or not a transfer of property held in trust is proportional, it is necessary to “look through the trust.” The transfer of real property by the present beneficiaries of a trust to a legal entity, such as a limited liability company owned by the trust beneficiaries in the same proportionate shares, is excluded from change in ownership under Revenue and Taxation Code section 62(a)(2). C 1/17/2001. (2002–1).

220.0375.025 Limited Liability Company—Series or Classes of Interests. The transfer of real property by its owners to a limited liability company, which statutorily is authorized to issue series or classes of ownership interests specific to the property being transferred, is excluded from change in ownership and reassessment where all of the subject series of ownership interests (represented by capital and profits) are owned exclusively by the former owners of the real property in the exact proportions in which they held the real property. C 8/17/99; C 3/29/2002. (2003–1).

220.0375.030 Limited Liability Company—Capital Interests and Profits. Property Tax Rule 462.180(d)(1)(A) provides that partnership and limited liability company (LLC) capital and profits are treated the same for majority ownership interest determinations. Under federal income tax law, partnership capital and profits interests are counted for purposes of determining a sale or exchange of those interests above a stated amount. A selling partner's capital interest is defined as equal to the portion of the partnership's equity that would be distributable to the partner upon a hypothetical sale of all partnership assets for their fair market value, satisfaction of all partnership liabilities, and liquidation of the partnership. The definition of partnership capital as a portion of the partnership's equity is applicable for change in ownership purposes. Equity is defined as an ownership right in property. Thus, the partner's share of the ownership rights in the partnership's property constitutes the partner's capital interest for federal income tax purposes. Likewise, Revenue and Taxation Code

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section 64 provides that a change in ownership is determined by the transfer of a majority of the partners' ownership interests to a single person or entity. Because partnership capital for federal income tax purposes is predicated on an ownership interest in the partnership, it is an appropriate definition for determining whether a partner or a member of an LLC has obtained a majority ownership interest in a partnership or LLC for change in ownership purposes. C 4/11/2005. (2006–1).

220.0376 Limited Liability Company. An irrevocable trust that has three equal, individual present beneficiaries holds title to real property. The trust forms a limited liability company (LLC) and contributes cash to the LLC in exchange for a 100 percent membership interest in the LLC. The trust then forms a limited partnership and contributes the real property owned by the trust to the partnership in exchange for a 99 percent limited partnership interest. The LLC contributes cash to the partnership in exchange for a 1 percent general partnership interest.

For change in ownership purposes, the present beneficiary of an irrevocable trust is considered to be the owner of the present beneficial interest in property held by the trust. Before the transfer, three beneficiaries each owned a one-third interest in the Trust property. After the transfer, each beneficiary will own a one-third interest in the property as a result of their respective one-third interest in the partnership and their one-third membership interest in the LLC. Therefore, the transfer of the trust property to the partnership is proportional and excluded from reassessment pursuant to Revenue and Taxation Code section 62(a)(2). C 11/7/2006. (2008–1).

220.0380 Limited Partnership. Upon the transfer of a limited partner's interest there will be no change in ownership, whether that transfer is inter vivos or by death, and whether or not consideration is paid. C 4/7/80.

220.0381 Limited Partnership. A transfer of real property owned by a husband and wife to a limited partnership having the husband as the general partner and the wife and their children as limited partners is not excluded by Revenue and

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Taxation Code section 62(a), which requires the proportional interests of the transferors and transferees remain the same after a transfer. C 10/28/81.

220.0382 Limited Partnership. A transfer of real property by an individual to a limited partnership, a partnership formed by two or more persons, is not excluded by Revenue and Taxation Code section 62(a), which requires that proportional interests of the transferor(s) and transferee(s) remain the same after a transfer. Any shift in the partners' interests in the partnership capital and profits during or immediately after the transfer destroys the required proportionality. C 9/1/81; C 1/6/2000. (Am. 2000–2).

220.0383 Limited Partnership. For purposes of Revenue and Taxation Code section 64(c), upon the transfer of partnership interests among partners, one partner must have acquired a majority interest in the partnership in order for a change in control to have occurred. Thus, no change in ownership results where after such transfers one partner becomes the sole general partner but still possesses less than a majority interest in the partnership. C 9/24/82.

220.0384 Limited Partnership. The transfer of a limited partnership interest(s) to a revocable trust(s) by the owner of the limited partnership interest(s) is not a change of ownership because it does not result in a transfer of a present beneficial interest in the partnership. Since there has been no change of ownership, the transferor of the partnership interest cannot be considered an "original transferor" referred to in Revenue and Taxation Code section 64(d). C 5/14/91.

220.0385 Limited Partnership. The transfer of property from a limited partnership to the limited partners is a change of ownership unless each partner has the same interest in the property before and after the transfer. The sameness of the interest is determined by comparing the partners' total interests in both the partnership capital/equity account and the profit/loss account with the partners' percentage interests in the property following the transfer. The same test would apply to any subsequent transfer by the partners to a new limited partnership. C 3/12/92. (Am. 2000–2; 2003–1).

220.0386 Limited Partnership. In determining whether there has been a change in the proportional ownership interest of a partner following a transfer of property to or from a partnership, distinctions between general and limited partnership law must be observed. In limited partnerships, the right to profits is more indicative of a particular partner's ownership interest than is that partner's contribution of capital. The opposite applies as regards ownership interests in general partnerships. C 5/5/83.

220.0387 Limited Partnership. When a partnership transfers interests denominated limited partnership interests but such interests do not include a right to share in partnership profits and losses but only a right to return of amounts invested plus interest thereon, a creditors/debtor relationship, not a partnership relationship, is established.

If the only actual general and limited partners are a husband and wife with equal ownership interests, a transfer of property by the partnership to the husband

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and wife as community property would be a change in the manner of holding title and not a change in ownership. C 10/21/88; C 6/19/98. (Am. 2000–1).

220.0388 Limited Partnership. If an individual transfers real property to a limited partnership in which the individual is the general partner and in which an irrevocable trust is the limited partner, the transfer will be excluded from change in ownership if the individual is also the income beneficiary of the trust. In the case of a similar transfer to a limited partnership by spouses who hold title as joint tenants or tenants in common, such a transfer will be excluded if the spouses become general partners and receive capital and profits interests in the same proportions as they held in the real property and if the spouses are also the sole income beneficiaries of the limited partner trust in the same proportion as the interests each held in the real property. If, however, the trustee in either case has the discretion or obligation to pay income to persons other than or in addition to the individual or spouses or to pay income to the spouses in proportions different than the interests each held in the real property, Revenue and Taxation Code section 62(a)(2) is inapplicable, notwithstanding the fact that the trust terminates in less than 12 years and the property reverts to the trustor/individual or trustors/spouses. Section 62(a)(2) requires exactitude, and coming close to identical proportionality is not sufficient.

If the spouses hold title to the real property as community property, then the transfer is excluded if either spouse becomes a general partner, as long as the partnership interest is held as community property. In such case, they would still be required to be the sole income beneficiaries of the trust. Conversely, if one spouse holds title to the real property as his or her separate property, then the transfer would be excluded only if that spouse and the trust are the only partners and if that spouse is the sole income beneficiary of the trust. C 3/31/92. (M99–1).

220.0389 Limited Partnership. A and B are equal beneficiaries, co-trustors, and co-trustees of a revocable trust which operates and is taxed as a partnership. Trust owns two parcels of real property and 100 percent of Corporation, which owns two additional parcels. To consolidate title under one entity, Corporation creates a wholly-owned subsidiary; and Trust and Subsidiary form Limited Partnership to which Corporation then transfers its two parcels and Trust transfers its two parcels in exchange for proportional interests in the Limited Partnership capital and profits. Each transfer is excluded from change in ownership under Revenue and Taxation Code section 62(a)(2), because the proportional interests of the underlying owners in each parcel are exactly the same following the transfer. The step transaction doctrine does not apply even though there are two separate transfers using the section 62(a)(2) exclusion, since the proportional ownership interests in the real property remain the same. C 12/20/90; C 7/31/95; C 12/19/96. (M99–2).

220.0391 Limited Partnership. A change in ownership occurs in partnership real property when a person obtains a majority ownership interest in the partnership pursuant to Revenue and Taxation Code section 64(c). With respect to corporate legal entities, section 64(c) speaks of obtaining “control through

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direct or indirect ownership or control of more than 50 percent of the voting stock of any corporation” and “any purchase or transfer of 50 percent or less of the ownership interest through which control . . . is obtained.” In this context, “control” is used in reference to control of the units of *ownership*, not with reference to control over the *management* of the entity’s property. Thus, in a limited partnership, when a general partner who owns 1 percent of the partnership interests obtains an additional 96 percent interest from a limited partner, the property owned by the partnership undergoes a change in ownership because, as a result of the transfer, that partner obtained a majority ownership interest. Whether an ownership interest is a general partnership interest or a limited partnership interest is irrelevant in analyzing property tax limited partnership change in ownership situations. What is relevant is the percentage of ownership acquired or transferred. The degree of ownership is determined by the direct or indirect ownership of the interests in the partnership capital and profits. C 8/10/2000. (2002–1).

220.0392 Limited Partnership. When a limited partnership dissolves upon the death of a partner (whether general or limited), but the remaining partner or partners carry on the partnership’s business in the form of a new partnership, there is a change in ownership of the partnership’s real property. However, no change in ownership results when a partner dies and the remaining partners agree in writing to continue the limited partnership pursuant to the provisions of Corporations Code section 15681(c), thus avoiding the dissolution of a limited partnership. C 5/28/2002. (2003–1).

220.0393 Limited Partnership. A merger of two limited partnerships will result in a change in ownership of the real property owned by both partnerships if the ownership interests in the capital and profits of both partnerships are not identical before and after the transfer. C 9/30/2005. (2006–2).

220.0394 Limited Partnership. A transfer of real property to a limited partnership in exchange for a separate class of partnership interests may be excluded from change in ownership under Revenue and Taxation Code section 62(a)(2) if the partner owns the same percentage of capital and profits in each piece of real property through the class of partnership interest in the limited partnership as the partner owned in its respective property prior to the transfer. C 3/1/2006. (2007–1).

220.0395 Lot Line Adjustments. Mutual deeds executed by neighbors to alter a common boundary and, therefore, place an accidentally, but improperly, located structure on land owned by the structure’s owner and to compensate the other owner with an equivalent area of land results in a change in ownership of each property conveyed.

While Revenue and Taxation Code section 62(e), formerly 62(l), excludes from change in ownership transfers intended to correct or reform a deed to express the original intentions of the parties, that exclusion is inapplicable when there is no deed ambiguity but rather, an intentional execution of deeds to accomplish a lot line adjustment. C 3/12/87.

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220.0398 Massachusetts or Business Trust. A Massachusetts or business trust rather than a partnership is created where the contract vests management control in the trustees rather than the certificate unit holders. Nevertheless, such a trust should be treated as a separate legal entity for property tax purposes where the contract provides that (1) the organization is a separate legal entity having its own common law identity; (2) the trustees shall hold both equitable and legal title to the property of the organization; and (3) the ownership of certificate units, which are in the nature of shares of stock, shall not entitle the holder to any legal or equitable title or any undivided interest in the property of the organization. C 4/26/94.

220.0399 Massachusetts Trust/Business Trust. If a trust is a business trust, instead of an ordinary trust for the conservation of assets, it is to be treated as a legal entity for property tax purposes. Determining whether a trust is a business or traditional trust requires a factual analysis of the evident trust purposes and trust documents. The parties are not at liberty to say that their purpose was other or narrower than that which they formally set forth in the instrument under which their activities were conducted. Given the broad powers provided to the trustee, if the property is capable of being rented, subdivided, developed, converted to business purposes, or otherwise being used as or in a business, the trust must be considered a business trust and, therefore, a legal entity for property tax purposes and subject to the provisions of Revenue and Taxation Code sections 61, subdivision (j), and 64. C 1/13/98. (M99-1).

220.0402 Mineral Rights. A lease for a term of less than 35 years to mine sand and gravel constitutes a change in ownership of the mineral rights under Revenue and Taxation Code section 61(a). However, if a lease option is executed, no change in ownership will occur until the option is exercised. A true option to lease is not a change in ownership because the option holder acquires no beneficial use of the property until the option is exercised. C 6/19/2006. (2007-1).

220.0410. Mining Claims. Performance of annual work on unpatented mining claims and filing of proof thereof are conditions to the continuation of a right granted for an indefinite term, and there is no renewal of a possessory interest and hence, no change in ownership as a result of such annual filings. C 5/26/82.

220.0411 Mining Claims. Unpatented mining claims create taxable possessory interests, while patented mining claims constitute fee ownership interests. In determining when the transfer of either type of interest is a change in ownership, Revenue and Taxation Code section 61(a) is controlling. C 12/13/89.

220.0420 Missing Person. Where a person disappears on August 19, 1975, a change in ownership of real property occurs on that date, August 19, 1982, or some date in between depending upon whether there is evidence to rebut the presumption that the person lived for seven years after his disappearance.

Evidence Code section 667 provided that “a person not heard from in seven years is presumed to be dead.” As a general rule, it is presumed that life continues throughout the entire period of seven years (*People v. Niccoli*, 102 Cal.App.2d

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814). Such presumption of life may be overcome, however, by evidence that the missing person was subjected to some specific peril, illness or other circumstances sufficient to justify the inference of death prior to seven years following the person's disappearance. Such evidence need be only of such character as to make it more probable than not that the person died at a particular time (*Estate of Christin*, 128 Cal.App. 625).

Each case of disappearance has its own individual facts and thus affords no precedent for a case of disappearance under different facts. C 3/29/85.

220.0425 Mobilehome Park. On and after January 1, 1985, any bona fide transfer of a rental mobilehome park to tenant ownership in the form of a nonprofit corporation, etc., is excluded from change in ownership by Revenue and Taxation Code section 62.1. This is a change from LTA 7/11/86 No. 86/52 in that conversion to condominium or stock cooperative ownership is no longer a requirement for exclusion. LTA 6/13/88 (No. 88/44).

220.0426 Mobilehome Park. The sale of all the ownership stock in a corporation that owns a mobilehome park to a nonprofit corporation, the stock of which is owned by park tenants, would result in a change in ownership of park property. The exclusion contained in Revenue and Taxation Code section 62.1 would be inapplicable since it only applies to transfers of mobilehome park property and not to transfers of corporate ownership interests, i.e., corporate stock. C 6/11/92.

220.0427 Mobilehome Park. A transfer of a mobilehome park to a tenant-owned, non-profit corporation between January 1, 1985 and January 1, 1989, is excluded from change in ownership. A similar transfer on or after January 1, 1989, is also excluded if tenants who were renting at least 51 percent of the spaces prior to the transfer own at least 51 percent in the entity acquiring the park.

If a transfer of a mobilehome park is excluded from change in ownership, above, but has not been converted to condominium, stock cooperative, or limited equity cooperative ownership, transfers after January 1, 1989, of voting stock or membership-ownership interests in the corporation requires a reappraisal of a pro-rata (as defined in Revenue and Taxation Code section 62.1(c)(2)) portion of the park's real property unless the transfers of the individual ownership interests are for the purpose of converting the park to one of the entities mentioned herein or is excluded from change in ownership by Revenue and Taxation Code sections 62, 63, or 63.1.

The cancellation of a stock certificate and the issuance of a new one to reflect the movement of a tenant from one space to another in a mobilehome park is not a transfer of a property interest but merely a substitution of one ownership indicia for another.

Transfers of spaces in a mobilehome park, as contrasted with transfers of ownership interests in the entity owning the mobilehome park, are excluded from change in ownership if made during the period January 1, 1985, to January 1, 1994, provided the conditions contained in Revenue and Taxation Code section 62.1(b) are met. C 8/7/91.

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220.0428 Mobilehome Park. On the transfer of a mobilehome park to the city in which it is located, the property becomes exempt from property taxation pursuant to Revenue and Taxation Code section 202(a)(4). Since the transfer does not come within any change in ownership exclusion, the assessor should appraise the property to obtain a base year value for future use. This value and the exemption should be enrolled.

If the city sells spaces to individual tenants during the period January 1, 1985, and January 1, 1994, if at least 51 percent of the spaces are purchased by persons renting their spaces prior to purchase, and if the tenants form, within one year after the first purchase of a space by a tenant, a resident organization referred to in Health and Safety Code section 50781, the city transfers would be excluded from change in ownership. (Revenue and Taxation Code section 62.1(b)) The base year value established at the time of the transfer to the city would be used.

The requirement that 51 percent of the spaces be purchased by tenants renting their spaces prior to purchase does not mean that a person had to be a tenant prior to the date on which title to the property transferred to the city, only that he or she was a tenant prior to purchasing the rented space. C 8/13/92.

220.0429 Mobilehome Park. The transfer of a mobilehome park to a trust that is to operate the property and eventually convey it to a tenant-ownership entity qualifies for exclusion from change in ownership under Revenue and Taxation Code section 62.2, provided that within one year of the transfer to the trust the property is transferred in a transaction that is excluded from change in ownership by Revenue and Taxation Code section 62.1 subdivisions (a) or (b). C 11/5/91.

220.0430 Mobilehome Park. Revenue and Taxation Code section 62.1 excludes from change in ownership “any transfer” after January 1, 1984, and before January 1, 1994, of a space in a mobilehome park to the occupant thereof if certain requirements are met. The fact that a space prior to the transfer is owned by a corporation in which the occupant is a stockholder does not disqualify the transfer. C 11/17/92.

220.0431 Mobilehome Park. The requirement of Revenue and Taxation Code section 62.1(b) that 51 percent of the spaces be purchased by tenants renting their spaces prior to purchase means that 51 percent of all of the spaces in the park, occupied or unoccupied, must be purchased by tenants, not that only 51 percent of the occupied spaces must be purchased. C 2/26/99. (2000–1).

220.0432 Mobilehome Park. Revenue and Taxation Code sections 62.1 and 62.2 create three sets of change in ownership exclusions with respect to the transfers of mobilehome parks to tenant ownership.

Section 62.1(a) excludes a transfer of a mobilehome park to an entity formed by the tenants of the park provided that the individual tenants who were renting at least 51 percent of the spaces in the mobilehome park prior to the transfer participate in the transaction through the ownership of an aggregate of at least 51 percent of the voting stock of, or other ownership or membership interests in, the entity which acquires the park. Section 62.1 (b) provides a separate exclusion for

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the transfer of rental spaces in a mobilehome park to the individual tenants of the rental spaces provided that (1) at least 51 percent of the rental spaces are purchased by individual tenants renting their spaces prior to purchase and (2) the individual tenants of these spaces form, within one year after the first purchase of a rental space by an individual tenant, a resident organization as described in Health and Safety Code section 50781 (k) to operate and maintain the park. And section 62.2 excludes any transfer of a mobilehome park to an entity which is not formed by the tenants, for a temporary period following the transfer, to facilitate the transfer of the park to resident ownership pursuant to one of the exclusions of section 62.1 described above. Within that temporary period, either section 62.1(a) or section 62.1(b) must be complied with, or the exclusion is lost. For mobilehome parks initially transferred after 1993, this temporary period within which section 62.1 must be completed with is 36 months. For mobilehome parks initially transferred between January 1, 1989 and January 1, 1993, that period was 18 months.

Once a transfer of a mobilehome park to an entity formed by tenants has been excluded from change in ownership pursuant to section 62.1(a), the subsequent transfers of ownership interests in that entity are treated as pro rata changes in ownership and are subject to reassessment. Similarly, after the initial transfers of units from the mobilehome park to individual tenants, which initial transfers are excluded from change in ownership pursuant to section 62.1(b), subsequent transfers of units by former tenants would be changes in ownership of those units transferred. C 5/14/99. (2000-1).

220.0433 Mobilehome Park. A mobilehome park was built with 171 lots, and some lots were purchased by tenants. Thereafter, a company that is neither a tenant of the park nor an entity formed and owned by the tenants of the park proposed to acquire the remaining lots with the intention of selling the lots to the remaining individual tenants. In order for both the transfer to this company and the subsequent transfers to the individual tenants of the park to be excluded from change in ownership, within 36 months after the transfer to this company at least 51 percent of the mobilehome park rental spaces must be transferred within a one year period to the individual tenants of those spaces in a transaction excluded from change in ownership by Revenue and Taxation Code section 62.1(b).

The tenants who previously purchased their lots are no longer considered "tenants renting their spaces," nor are the lots they purchased "rental spaces." For purposes of satisfying the "51 percent" requirement, such residents would not be included in the calculation.

The legislative repeal of the January 1, 2000, sunset date in section 62.1(b) means that the exemption continues for years after 1999 and eliminates the cut-off date for tenants to purchase their units after a qualifying transfer to 51 percent of the tenants under that section. C 6/3/99. (2001-1).

220.0434 Mobilehome Parks. Revenue and Taxation Code section 62.1(b)(1) provides for the pro rata reassessment of the property of resident-owned mobilehome parks upon the transfer, on or after January 1, 1989, of ownership or membership interests in the entity owning the park. Subdivisions (b)(4)(A) and

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(b)(4)(C) provide that, where pro rata changes in ownership occurred between January 1, 1989, and January 1, 2002, for which the assessor did not, prior to January 1, 2000, levy any assessments, the assessor is prohibited from levying any escape or supplemental assessments and must cancel any unpaid taxes on assessments levied between January 1, 2000 and January 1, 2002. However, the assessor is to include in the value on the regular roll for the January 1, 2001, lien date, the reassessed value attributable to all prior pro rata changes in ownership, even those that occurred prior to 2000 which were not discovered or assessed in prior years. These provisions do not apply to a timely assessment made for the 2001 lien date of a pro rata change in ownership that occurred in 2000. C 10/2/2002. (2004-1).

220.0435 **Mutual Water Company.** If a tax exempt agency obtains, for example, a 60 percent ownership interest in a mutual water company, whose shares of stock are not appurtenant to the land served but are instead traded as is the stock of any corporation, a reappraisable change of ownership has occurred. Without a specific statutory exemption, the water company's property remains 100 percent taxable. C 9/4/90.

220.0437 **Nonprofit Corporation—Transfer of Home Site Permits.** Membership in a nonprofit corporation includes a "home site permit" which entitles the member to possess and occupy a specific prescribed lot or home site on the property owned by the non-profit corporation. Pursuant to the home site permit, the member may sell the membership in the club, including the home site permit and any structures, improvements and personal property the member may have erected on the site, subject to the corporation's board of director's approval of the new member. A transfer of such a home site permit constitutes a change in ownership under section 60 of the portion of the real property constituting the home site covered by the home site permit, because it transfers a present interest in real property, including the beneficial use thereof, which is substantially equivalent to the fee. C 4/3/2001. (2003-1).

220.0438 **Nonprofit Mutual Benefit Corporation.** Where there is no stock ownership in instances involving nonprofit mutual benefit corporations, members of those corporations have possessory rights to the corporation's real property and are not limited to use of the corporation's real property for corporate purposes; the nature of the relationship for purposes of change in ownership is not that of a corporation and its shareholders but rather, that of a tenancy in common in which each co-owner's property interest is terminable and/or transferable. Thus, as in the case of tenancy-in-common interests, the creation, transfer or termination of membership interests should be changes in ownership of the interests transferred. C 4/3/2002. (2003-1).

220.0440 **Option to Lease or Purchase.** A true option to lease or purchase is not a change in ownership until it is exercised. The date of valuation is generally the date the option is exercised. C 4/21/82; C 2/6/85.

220.0445 **Options.** Purchase options are not specifically covered by current statutes. The general rule is that a change in ownership occurs when the option is

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exercised. Exceptions to this rule do occur, however, when the agreement is not truly an option but is actually a form of sales agreement or contract.

A purchase option obligates only the selling party. Even though the potential purchaser (the optionee) has no legal obligation to purchase the property, there are circumstances where he is economically compelled to complete the transaction. This would occur whenever the optionee would realize a significant and immediate equity in the property merely by exercising the option. For example, if the option specifies a selling price that is significantly less than the current market value, or in the case of a lease/purchase option, when the lessee is paying more than economic rent and the excess is being applied toward the purchase price, a sales contract would exist. When significant equity is present at the time the option is originated or it can be determined at the time of origination that equity will be established with certainty within a short period, the option is a form of sales agreement and revaluation should occur as of the date the option was created.

Lease options are addressed in Property Tax rule 462(e)(1). Pursuant thereto, the 35-year lease term pertaining to the revaluation of properties subject to long-term leases is determined by combining the terms of the base lease and renewal options. LTA 10/7/80 (No. 80/147).

220.0446 **Options.** Determining whether or not a lease with an option to purchase is, in fact, a purchase at the time the lease is entered requires a consideration of the total amount the lessee will pay for the use of the property; the current and foreseeable future value of the property; the equity the lessee is developing under the terms of the lease; and the amount of capital improvements the lessee is required to or does make to the property. If this information leads to the conclusion that the lessee is under an economic compulsion to purchase, then a change in ownership occurred on execution of the "lease". C 10/21/88.

220.0450 **Original Coowners.** Revenue and Taxation Code section 64(d) defines original co-owners as owners of interests in a legal entity which obtains ownership of property in a transaction excluded from change of ownership by section 62(a)(2). By referring to section 62(a)(2) only, it is implied that transfers excluded from "change of ownership" in other subdivisions of section 62 do not result in the owners being identified as "original co-owners". There is, however, no specific statutory or judicial authority for or against such a conclusion. C 5/14/91.

220.0451 **Original Coowner Transfers From Limited Partnership to Trusts (GRATS and CLATS).** Transfers of interests in legal entities, e.g., limited partnerships, by "original coowners" into revocable trusts, irrevocable trustor-transferor beneficiary trusts, or trustor reversion trusts should not be "counted" for Revenue and Taxation Code section 64(d) purposes. The trust exclusion in Revenue and Taxation Code section 62(d) takes precedence over transfers by "original coowners" under section 64(d). If the "original coowners" take the extra steps described in the note of legislative intent following Revenue and Taxation Code section 63.1 in order to use the parent/child exclusion, the step

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transaction doctrine may not be applied to collapse the steps and trigger a change in ownership under section 64(d). C 10/30/96; C 9/29/97. (M99-1).

220.0452 Original Coowners. When original coowners transfer cumulatively more than 50 percent of the partnership interests, Revenue and Taxation Code section 64(d) requires 100 percent reappraisal of the property previously excluded under Revenue and Taxation Code section 62(a)(2). When property is reappraised because of the cumulative transfer by original coowners, the former partners lose their “original coowner” status after reappraisal. C 8/26/98. (2000-1).

220.0453 Original Coowners. Four persons transferred real property into a limited liability company in a transaction that was excluded from change in ownership under Revenue and Taxation Code section 62(a)(2). Thus, these four persons became original coowners under section 64(d). Subsequently, the limited liability company acquired other property. When the four original coowners cumulatively transfer more than 50 percent of their interest in the limited liability company, this will result in a reassessment of the real property that had been previously excluded from reassessment under section 62(a)(2). C 7/26/2006. (2007-1).

220.0455 Original Transferor. If A and B take title to property as joint tenants on a conveyance by a third party, neither A nor B qualify as original transferors. If A transfers property to A and B as joint tenants, only A qualifies as an original transferor. At A’s death, a reappraisal of the entire property is required by Revenue and Taxation Code section 65(c). C 7/11/84.

220.0456 Original Transferor. Revenue and Taxation Code section 65(b) defines an “original transferor” as a transferor who creates or transfers a joint tenancy interest and who remains as one of the joint tenants after the creation or transfer of the interest. Persons who purchase property as joint tenants are and remain transferees, not transferors. Thus, a father, mother, and child who purchase and continue to hold real property as joint tenants are not “original transferors”, with the result that upon the death of one of the joint tenants, the “original transferor” concept is not available to preclude the termination of such joint tenancy interest from reappraisal as a change in ownership thereof. C 6/29/92.

220.0460 Partition. The exclusion of divisions of properties giving separate title to persons who previously held undivided interests therein from the meaning of “change in ownership” in Revenue and Taxation Code section 62(a) is applicable only to transfers of interests held in tenancy in common or in joint tenancy.

In order to determine whether or not the same proportional interest exists after the transfer, it is necessary to establish and compare the market value of each property that has been created by the transfer. For example, if a two-acre parcel being held jointly is split into two separately held one-acre parcels, the value of each one-acre parcel, as a separate unit, must be determined and the two values compared.

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While the specific language of the statute would indicate that any change in the proportional interests would trigger a reappraisal, the assessor can exercise his judgment in making the value comparison. In our opinion, a change in proportional interest of less than 5 percent could be construed as no change in ownership following the same principle applicable to transfers of undivided interests of less than 5 percent (Revenue and Taxation Code section 65(b)).

If it is determined that a change in proportional interests has occurred, the interest transferred is subject to revaluation. LTA 5/16/80 (No. 80/84).

220.0461 **Partition.** The exclusion of divisions of properties giving separate title to persons who previously held undivided interests therein from the meaning of “change in ownership” in Revenue and Taxation Code section 62(a) is applicable where the same proportional interests exist after the partition of property, even though the partition takes more than one assessment year to fully execute. C 10/2/80.

220.0462 **Partition.** While LTA 5/16/80 (No. 80/84) advocates use of the “appraisal unit” when considering transfers of interests excluded from the meaning of “change in ownership” by Revenue and Taxation Code section 62(a), the fact that a transfer which otherwise meets the requirements of the section necessitates alteration of an existing parcel’s physical configuration should not thwart the legislative intent of the section, and there should be no revaluation because of such fact. C 3/16/84.

220.0463 **Partition.** When tenants in common own an apartment complex that they decide to partition and convert to condominiums, the timing of the partition will determine whether there has been a change in ownership requiring a reappraisal. If the partition occurs before the conversion and the interests of each owner is in proportion to the interest held prior to partition, no appraisal should occur. If, however, conversion and the sale of one unit precedes partition, then each condominium would be regarded as a separate appraisal unit and a comparison of the proportional interests held before and after the transfer of each condominium would be required. C 4/6/88; C 5/2/2006. (Am. 2007-1).

220.0464 **Partition.** Owners of undivided interests in real property may partition the property without causing a reappraisal provided each owner obtains ownership of property that is equal in value to the undivided interest previously held. In determining the value of the property owned after partition, the assumption of a mortgage or other debt should be ignored. C 7/31/86.

220.0465 **Partition.** An appraisal unit of 80 acres partitioned by the three owners into 11 parcels and then distributed 4 parcels to two former co-owners and 3 parcels to the third does not result in a change of ownership if the proportionality test of Revenue and Taxation Code section 62 subdivision (a)(1) is satisfied. The fact that there are more parcels (appraisal units) after partition than there are owners is immaterial. C 3/20/92.

220.0466 **Partition.** When co-owners of acreage are required by subdivision law to subdivide their acreage before they can partition it, the act of subdividing the

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property should be ignored when determining whether each owner has received an interest proportional to the interest previously held in the acreage. The transfers of interests in the subdivided lots should not result in reappraisals based on a conclusion that transfers in separate lots have occurred rather than a partition of the acreage. Additionally, the value of improvements put in place by the recipient of a particular lot should be excluded from the valuation of the land when determining the proportionality of the land values before and after the partition. C 5/9/86.

220.0467 **Partition.** Should A and B own a single property which they are required by law to subdivide prior to partition, it would be proper to view the subdivision as a necessary step in partition and treat the partition as involving a single property, not multiple properties. C 7/27/87. (Am. M99-2).

220.0468 **Partition.** If the parties to the transfers of two parcels were co-owners of both parcels prior to the transfers, and if it is found that both parcels are part of a single appraisal unit and that the proportionate interests of the parties in the appraisal unit remained the same from a value standpoint after the transfers, Revenue and Taxation Code section 62(a)(1) is applicable to exclude the transfers from change in ownership.

If the parties to the transfers were not co-owners of both parcels prior to the transfers, or if the two parcels are separate appraisal units, Revenue and Taxation Code section 62(a)(1) is not applicable, and the interests transferred must be reappraised. C 7/21/87. (M99-2).

220.0475 **Partners.** Corporations Code section 15010.5 provides, in part, that as to a bona fide purchaser, it is conclusively presumed that the named partners listed in a Statement of Partnership filed with the County Recorder are the only partners. However, as between or among partners, the partnership agreement controls as to ownership. C 9/27/82. (Renumbered M99-2).

220.0480 **Partnership.** Transfers of ownership interests in legal entities are subject to the provisions of Revenue and Taxation Code section 64(a), regardless of the purpose for which the legal entity was formed or is operated. C 2/25/94.

220.0481 **Partnership.** An amendment to a partnership agreement, providing that the proceeds from the sale of particular partnership real properties would be allocated to particular partners, does not in and of itself constitute a change in ownership of the partnership's properties since assignment of proceeds from future sales does not constitute a transfer of present, beneficial interests in the properties which are substantially equal to the values of the fee interests. If, however, upon the sale of a property or properties, a partner's capital and profit accounts increase to more than 50 percent of the total partnership capital and profit accounts, there will be a change in control of the kind contemplated by Revenue and Taxation Code section 64(c) and a change in ownership of the partnership's properties. C 3/2/84; C 3/15/84.

220.0482 **Partnership.** A change in ownership of X Partnership property, land and buildings, occurs on the transfer of the majority partner's 70 percent interest

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of both capital and profits in X Partnership, held in Y Partnership 67.5 percent by an individual, 9 percent by his wholly-owned corporation, and 23.5 percent by others, to a new limited partnership in which the individual holds 7.8 percent, his wholly-owned corporation holds .592 percent, his revocable trust hold 60 percent, and others hold 31.608 percent, even though before and after the transfer, the individual owned a majority capital and income interest in the Y Partnership/limited partnership and had the actual authority to control the management and operation of the X Partnership property. Upon the transfer to the limited partnership, there is a change in control of the X Partnership property within the meaning of Revenue and Taxation Code section 64(c) since the limited partnership, an unrelated entity, obtains more than a 50 percent interest in X Partnership. And the transfer is not excluded by Revenue and Taxation Code section 62(a) since the proportional interests of the transferor partners and transferee partners are not the same after the transfer. C 6/3/86.

220.0483 Partnership. A wife's purchase from a third party of a 5 percent interest in the capital and profits of a partnership in which her husband owns a 49 percent interest does not result in a change in ownership unless the husband's 49 percent interest is his separate property and the wife acquires the 5 percent interest with community property funds. In that event, the husband would have obtained indirect control of more than 50 percent of the partnership interest (Property Tax rule 462(j)(3) and (4)(A)(ii)). Generally, however, an interest owned in a legal entity by one spouse is not considered to be indirectly owned by the other spouse for purposes of rule 462(j)(4)(A). C 4/12/88.

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- 220.0484 **Partnership.** The sale of less than a 50 percent interest in a partnership does not cause the dissolution of the partnership and result in a change in ownership of the partnership's real property where the partnership agreement provides that the partnership is to continue in existence unless terminated for a specific reason or reasons, as set forth therein, and that the partners may sell their partnership interests to others, when such a sale or sales is not one of the reasons for termination. C 12/9/81.
- 220.0485 **Partnership.** The merging of several existing partnerships into another existing partnership which holds title to real property and which will remain in existence as a continuing partnership does not constitute a change in ownership of the partnership's property where, subsequent to the mergers, no partnership or other person will have obtained direct or indirect ownership of more than 50 percent of the total interests in the continuing partnership's capital and profits. If, subsequent to the mergers, the existing partnership did not remain in existence but rather, a new partnership came into being, however, there would be a change in ownership of the property as the result of the transfer of the property from one partnership to another. C 2/15/83; C 4/20/84.
- 220.0486 **Partnership.** Neither a change in the name of a partnership nor an increase in the size of its management committee constitutes a change in ownership of the partnership's property. C 5/7/82.
- 220.0487 **Partnership.** Transfers of properties by partnerships to partners are changes in ownership pursuant to Revenue and Taxation Code section 61(i), except that where the proportional ownership interests of the partners in the properties are identical both before and after such transfers, the transfers come within the exclusion of section 62(a). C 2/4/82.
- 220.0488 **Partnership.** The contribution of property by seven tenants in common to a partnership in which the transferors receive partnership interests equal to their respective interests in the contributed property is excluded from change in ownership under Revenue and Taxation Code section 62(a)(2). However, subsequent transfers of partnership interests to the heirs of the original co-owners/partners, which aggregate cumulatively more than 50 percent of the total partnership interests, will, under Revenue and Taxation Code section 64(d), result in a change in ownership and reappraisal of the property previously excluded. The parent-child exclusion in section 63.1 does not apply to transfers of partnership or legal entity interests or where the transferor is a partnership or entity and not a parent. C 5/28/92. (M99-1).
- 220.0489 **Partnership.** Some 500 separate California limited partnerships were consolidated into a single master limited partnership by court order, which order included the replacement of the general partner. The real property holdings of the partnerships included 100 postal properties.

The transfers of real properties from the separate partnerships to the new partnership with a new general partner were changes in ownership, even though court-ordered. Further, the transfers had to result in changes in the ownership

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interests of the individual partnerships which before the transfers each owned a single postal property and after the transfers had a proportional interest in 100 postal properties. LTA 5/30/91 (No. 91/43).

220.0490 Partnership. If two or more partners purchase realty and record their title as tenants-in-common along with an agreement stating in effect that the property is owned separately from partnership assets, then the law presumes that the individuals own the property as tenants-in-common, not as partners.

The presumption that recorded title indicates not only the legal title but also the beneficial title is not overcome by the fact the property is used for partnership purposes. The transfer of one owner's interest to a co-owner or a third party requires an appraisal of the interest transferred. C 2/7/89.

220.0491 Partnership. A transfer of partnership property by the partnership to one or more of the partners usually constitutes a change of ownership that requires a reappraisal. However, if the purpose of the transfer is to facilitate a subsequent transfer qualified for the parent/child exclusion contained in Revenue and Taxation Code section 63.1, no reappraisal occurs. C 3/10/92.

220.0492 Partnership. The conversion of a general partnership to a limited partnership and the conversion of the various partners' interests from general to limited or vice versa do not result in changes in ownership so long as each partner has the same interest in the resulting partnership's capital and profits as existed prior to the conversion(s). C 6/23/89; C 9/11/97. (Am. M99–2).

220.0493 Partnership. Partnerships are considered separate legal entities so that transfers by individuals to partnerships in which they hold partnership interests constitute changes in ownership for reappraisal purposes unless Revenue and Taxation Code section 62(a)(2) applies and the transfers result only in changes in the manner of holding title. To fit within this exception, the ownership interests in each and every piece of real property after the transfers must be proportional to the individuals' ownership interests before the transfers. C 12/7/88.

220.0494 Partnership. Transfers of interests in real properties to or from a partnership are changes in ownership of the interests transferred unless the transfers result solely in changes in the manner of holding title and the proportionality of ownership is the same before and after the transfers.

Transfers of ownership interests in partnerships do not constitute transfers of the partnerships' real properties unless the transfers result in changes in control of the partnership properties or the transfers are of interests previously transferred but excluded by Revenue and Taxation Code section 62(a)(2) from the definition of change in ownership. In the latter instance, only the property which was previously excluded from change in ownership pursuant to section 62(a)(2) is to be reappraised. C 8/19/86.

220.0495 Partnership. The transfer by a husband and wife of community property to a partnership in which they have a 98 percent ownership interest through a revocable living trust and their daughter and son each have individual 1 percent ownership interests results in a change in ownership. While neither a

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transfer of real property to a revocable trust nor a qualified transfer between parents and their children is considered a change in ownership, this transfer was to a partnership. And while a transfer of real property to a partnership is excluded from change in ownership if it qualifies under Revenue and Taxation Code section 62(a)(2), the proportional ownership interests of the transferors and transferees, as represented by partnership interests, did not remain the same after the transfer. C 9/19/90.

220.0496 Partnership. The transfer by a corporation of its 60 percent ownership interest in a partnership to its wholly-owned subsidiary is not a change in ownership, even though following the transfer, the subsidiary will own an 85 percent interest in the partnership. The ultimate ownership of the partnership remains unchanged by virtue of the parent corporation's 100 percent ownership of the subsidiary. C 10/15/90.

220.0497 Partnership. The contribution of property by several tenants in common to a partnership in which the transferors receive ownership interests equal to their interests in the contributed property does not result in a change in ownership of the property. Subsequent transfers of interests in the partnership to heirs of the original partners will result in a reappraisal of the transferred interests when said interests cumulatively amount to more than 50 percent of all partnership interests. Even if the transfers were to the partners' children, they would not be eligible for the exclusion afforded parent-child transfers since that exclusion does not apply to transfers by partnership or corporate entities. C 5/28/92.

220.0498 Partnership. If a general partnership holding a 60.7 percent interest in a limited partnership is liquidated and its property, including the 60.7 percent interest, is distributed to the general partners in the same proportions as their ownership interests in the general partnership, there would be a change in the manner of holding title but no change in ownership of the limited partnership's assets. However, a distribution of the limited partnership's assets would be a change in ownership unless title was taken by the general partners as co-owners and in the same proportion as their respective interests in the general partnership. C 3/17/89.

220.0499 Partnership. The purchase by two partners of a third partner's partnership interest does not result in a change in ownership in partnership property if neither partner obtains more than a 50 percent interest in both partnership capital and profits whether or not the partnership is a continuing one. LTA 8/21/96 (No. 96/52).

220.0500 Partnership. If one general partner buys out the other general partners, no change in ownership will occur if there are limited partners remaining who own the majority interest in the capital and profits of the partnership. C 9/24/82.

220.0501 Partnership. "A" owns 50 percent of Partnership one. Partnership two owns the other 50 percent. Partnership two is, in turn, owned 25 percent by

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Partnership three and 75 percent by unrelated third parties. If “A” obtains an 8.5 percent interest in Partnership two from Partnership three, he/she would not gain control of Partnership one, so no change in ownership would occur. For such a change to occur, “A” would have to obtain an ownership interest in Partnership one directly from Partnership two or indirectly by acquiring a more than 50 percent interest in the capital and profits of Partnership two. C 5/3/89; C 1/22/99. (Am. 2000–1).

220.0502 Partnership. Transfers of properties from a corporation to a partnership with no change in the percentages of interest owned by the shareholders and the partners do not result in changes in ownership. However, a subsequent transfer of all partnership interests to a newly formed limited partnership composed of two corporate general partners (2 percent ownership interests) and the shareholders of the original corporation (98 percent limited ownership interests) is a change in ownership of the partnership properties unless the limited partnership is a continuation of the original partnership.

Corporation Code section 15031 provides that the dissolution of a partnership is caused by the admission of a new partner unless otherwise provided in the partnership agreement prior to admission of the new partner. If there is no “continuation clause”, a new partnership with different ownership interests comes into existence, and transfers to it result in changes in ownership. C 6/16/89.

220.0503 Partnership. The transfer of real property from a general partnership to a limited partnership composed of the same partners, each of whom receives the same proportionate ownership interest in the limited partnership as was held in the general partnership, is excluded from change in ownership per Revenue and Taxation Code section 62(a)(2).

A transfer of real property to a legal entity, such as a limited partnership, which is excluded under section 62(a)(2) becomes subject to the provisions of Revenue and Taxation Code section 64(d), i.e., the limited partners are “original co-owners” and subsequent transfers by them are accumulated so that when cumulatively more than 50 percent of the total interests are transferred by any of the “original co-owners” in one or more transactions, a change in ownership of all real property owned by the limited partnership that was previously excluded from change in ownership will be reappraised. C 11/16/88.

220.0504 Partnership. The execution and recording of a Statement of Partnership constitute acts sufficient to create a partnership. A subsequent transfer of property owned by some of the partners to the partnership creates ownership interests in all the partners and is, therefore, a change in ownership.

If the partners agree to amend the partnership agreement so that only the contributors of property to the partnership remain partners and the others drop out, then the old factored base year value could be reinstated. This would not result in a refund of taxes, however since tax liability is determined by the facts as they exist on the March 1 lien date for the regular roll, or on the date of the change in ownership for the supplemental roll. C 4/29/86.

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220.0505 Partnership. A mother and her three sons are “original co-owners” (Property Tax rule 462(j)(2)(b)) of a partnership’s interests. The mother transfers 49½ percent of the interests to several people, none of whom thereby obtain control of the partnership. Two of the sons then wish to have their spouses, who are community property co-owners of the sons’ original interests in the partnership, recognized as individual owners of halves of the community interests.

Since the mother did not transfer more than 50 percent of the total partnership interest, no change of ownership occurred. The subsequent recognition of the sons’ spouses’ interests did not raise the mother’s 49½ percent transfer to more than 50 percent. The spouses already owned their interests, which were simply converted from community property to separate property status. C 9/24/90.

220.0506 Partnership. When one of two equal partners sells his/her partnership interest to the partnership or buys the other partner’s 50 percent interest in the partnership, the remaining partner obtains a majority ownership interest. Therefore, pursuant to Revenue and Taxation Code section 64(c)(1), a change in control of the partnership occurs, resulting in a change in ownership of the real property owned by the partnership and a reassessment of that property for property tax purposes. C 1/11/89; C 4/30/99. (Am. 2000-1).

220.0507 Partnership. A transfer of real property by partnership A to partnership B which is owned 50 percent by A and 50 percent by Corporation X constitutes a 100 percent change in the ownership of the property transferred. Because of the legal entity theory adopted by the Legislature, the 50 percent ownership held by partnership A in partnership B does not limit reappraisal to 50 percent of the property. The transfer does not result merely in a change in the manner of holding title and proportional ownership does not remain the same after the transfer.

Partnership B now owns and controls the property. Had partnership A retained a 50 percent interest in the property, it could control that interest. As the property is now owned by partnership B, it must be used only for B’s purposes. The fact that A could have transferred a 50 percent interest and thereby limited reappraisal to the interest transferred is immaterial. A chose to transfer total ownership of the property and must accept the tax consequences of that decision. C 2/18/86.

220.0508 Partnership. If a husband and wife hold a partnership interest in joint tenancy or as equal tenants in common and then obtain all partnership interests so that each spouse owns a 50 percent joint tenancy or tenancy in common interest, no change in ownership or control occurs since neither spouse owns more than 50 percent of the total partnership interests. The interest owned by each spouse is not attributed to the other.

The above conclusion is dependent upon there being no dissolution of the partnership on the withdrawal of the non-spousal partners. The partnership agreement executed prior to withdrawal must contain an explicit non-dissolution clause. C 7/10/89.

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220.0509 Partnership. When a general partnership converts to a limited partnership, a change in ownership of the general partnership property occurs, but the transfer may be excluded from change in ownership pursuant to Revenue and Taxation Code section 62(a)(2). If the ownership interests in the property are the same before and after the transfer, such that section 62(a)(2) applies, nevertheless, the partners become “original coowners;” and when subsequent transfers of cumulatively more than 50 percent of the total partnership interests take place, a change in ownership will result as provided by Revenue and Taxation Code section 64(d). C 8/15/97. (M99-2).

220.0510 Partnership. Where a partnership agreement does not provide for continuation of the partnership, the death of a partner results in a dissolution of the partnership. In a two-person partnership in which each partner holds a 50 percent partnership interest, if an heir succeeds to the partnership interest of a deceased partner, there is an immediate transfer of the deceased partner’s partnership interest upon his or her death but the heir does not become a partner. The transfer of the deceased partner’s partnership interest constitutes a transfer of 50 percent or less of the total partnership interest, and there is no change in ownership pursuant to Revenue and Taxation Code section 64(a). Additionally, if the heir is a spouse, such a transfer would also be excluded by Revenue and Taxation Code section 63.

If the surviving partner and the heir become equal partners, they effectively form a new partnership in one of two ways, either of which is a change in ownership of the property involved. The first is by a transfer from the dissolved partnership with the surviving partner as sole partner to the new partnership with the surviving partner and heir as partners. The proportional ownership interests do not remain the same after the transfer. The second involves a transfer of the real property from the partnership to the surviving partner and to the heir in equal shares and subsequent transfers of the real property by the parties to the new partnership with themselves as equal partners. Although the parties would hold the same proportional interests before and after each transfer and the Revenue and Taxation Code section 62(a)(2) could be applicable, the transfers would result in changes in ownership under the step transaction doctrine.

If the partnership liquidates, there is a change in ownership of the real property, but the section 62(a)(2) exclusion is applicable. Upon dissolution, the surviving partner is empowered to wind up the partnership by statutory authority, but he or she receives no vested or beneficial interest in the deceased partner’s share of the partnership or its assets. When the real property is distributed to the surviving partner and the heir, the proportional ownership interests in the real property transferred are the same. C 4/11/97. (M99-2).

220.0511 Partnership. The exclusion under Revenue and Taxation Code section 62(a)(2) applies to a proportional transfer of real property from a partnership to its partners even though the partners as individuals do not hold title to the partnership property pursuant to Corporations Code sections 16501, 16502, 16201, and 16203. C 3/1/2006. (2007-1).

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220.0512 **Partnership.** Revenue and Taxation Code section 62(a)(2) provides an exclusion from change in ownership if the ownership interest transferred between a legal entity and an individual remains the same before and after the transaction. If an individual transfers a 25.85 percent interest in real property to a partnership in exchange for a 40 percent interest in capital and profits, this will result in a change in ownership of the interest transferred because the ownership interests are not proportional. Even though the value of the real property may be equal to the value of the partnership interest, the comparison standard is ownership interests. C 3/13/2006. (2007–1).

220.0525 **Partnership/Control.** The ABC Partnership is owned by the XY Partnership (64 percent), X as an individual (20 percent), and X and his wife as coowners (16 percent). X and Y each have a 50 percent interest in the XY Partnership.

The XY Partnership is terminated by Y's death, and X receives his 50 percent interest (32 percent interest in ABC Partnership) which, when combined with his

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individual 20 percent interest and 8 percent interest (half of the 16 percent owned with his wife), increases his ownership interest in the ABC Partnership to 60 percent. A change in control has occurred under Revenue and Taxation Code section 64(c), resulting in a change in ownership of the property owned by the ABC Partnership. The result would be different if X had already acquired control of ABC Partnership by owning more than 50 percent of the XY Partnership at the time of Y's death. C 5/18/89; C 1/22/99. (M99–1; Am. 2000–1).

220.0526 Partnership. Upon the death of the majority partner, Trust A directed the successor trustee to distribute W's 62.5 percent interest in the partnership in equal shares to son and daughter (31.25 percent each). The transfer of W's majority interest in the partnership did not result in a change in ownership of the real property owned by the partnership because the transfer did not result in any individual or entity holding more than 50 percent of the partnership interests. C 1/17/2006. (2006–2).

220.0528 Partnership—Death of Partner. AB Partnership is a California general partnership owned 75 percent by A through his revocable living trust and 25 percent by B through his revocable living trust. Similarly, BA Partnership is also owned 49 percent by A and 51 percent by B. Upon A's death, A's trust became irrevocable and his partnership interests transferred to the beneficiaries of A's trust. Unless there is an applicable exclusion, there was a change in ownership of the property (including any partnership interests) in A's Trust on the date of A's death when his trust became irrevocable and A's beneficiary(ies) became the owners.

As to AB Partnership, there is a change in control under Revenue and Taxation Code section 64(c)(1) because of the transfer of A's majority (75 percent) interest, unless 1) the beneficiary is A's spouse, or 2) the beneficiaries are two or more persons and the partnership agreement required continuation with A's beneficiaries as partners.

As to BA Partnership, the transfer of A's minority (49 percent) interest to his beneficiary(ies) is excluded from change in ownership under Revenue and Taxation Code section 64(a), since the total interest transferred did not exceed 50 percent. C 7/13/99. (2001–1).

220.0529 Partnership—Deed Presumption. In order to prove that the property was owned by a partnership, rather than as tenants in common, evidence may be presented to the assessor to rebut the deed presumption under Rule 462.200(b). Evidence such as of the use of a joint checking account for property-related expenses, affidavits from an accountant and former alleged partners, and partnership tax returns may be provided. The evidence should show the percentage of ownership interest of each partner in the partnership's capital and profits. Further, in determining whether a partnership is formed, the intention of the parties is the ultimate test. The parties need not designate their relationship as a partnership. The intent of the parties can be deduced from the partnership agreement as well as the surrounding circumstances. If a formal partnership agreement did not exist, the intent to form a partnership must be demonstrated by

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evidence such as the alleged partners' conduct, transactions, and declarations such as use of a joint checking account and affidavits. Thus, if the assessor is satisfied that the evidence presented provides clear and convincing evidence that the tenants in common were partners, the assessor may find that the property was beneficially owned by the partnership. C 5/4/2007. (2008–1).

220.0530 Partnership Dissolution—Transfer to Heirs.

1. The dissolution of a partnership due to the death of the partners and the winding up of the partnership by the sole surviving partner does not constitute a change in control/ownership of the partnership under section 64(c).
2. The parent-child exclusion in section 63.1 is not applicable to the transfer of partnership interests to deceased partners' heirs.
3. Partnership's distribution of interests in real property to deceased partners' heirs may be excluded from change in ownership under section 62(a)(2), providing that the percentages of the property interests transferred are exactly proportionate to the partnership interests held by each heir. C 3/10/94.

220.0536 Partnership Merger. Two California general partnerships each own real property in California and are both owned in identical proportions by the same family members. The family proposes to merge the two entities by (1) transferring the partnership interests from Partnership D to Partnership P in exchange for additional partnership interests in P, and (2) dissolving Partnership D and distributing all of its assets to Partnership P. Since this appears to constitute a statutory partnership conversion or merger as defined by Corporations Code section 16909 or 16914, there is no change in ownership because there is no transfer of the property from one partnership to another. If no transfer occurred, there is no need to apply the exclusion of Revenue and Taxation Code section 62(a)(2), the triggering event for the application of Revenue and Taxation Code section 64(d), and there is, therefore, no "original co-owner" designation. If, however, the transfer does *not* constitute a statutory conversion or merger, the transfer would be excluded under section 62(a)(2), resulting in an "original co-owner" designation for purposes of subsequent transfers. C 1/22/2002. (2003–1).

220.0538 Partnership Transfer/Conversion. A, B, and C, the general partners in a general partnership, admit newly formed Corporation as a general partner by each contributing 1 percent of his partnership interest to Corporation in exchange for proportionate ownership interests in Corporation. As a result, Corporation acquires a 1 percent interest in the partnership, and there is no change in ownership (Revenue and Taxation Code section 64(a)). Thereafter, the partnership converts to a limited partnership and assigns its long-term leasehold interest to the limited partnership. The exclusion from change in ownership pursuant to Revenue and Taxation Code section 62(a)(2) is available, provided that the general partners hold the same proportionate interest in the limited partnership after the conversion; but each general partnership will become an "original coowner" for purposes of determining change in ownership resulting from subsequent transfers of interests in the limited partnership. C 12/6/90. (M99–1).

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220.0540 Penalty for Failure to File Statement.

1. The penalty under Revenue and Taxation Code section 482 for failure to file a change in ownership statement is mandatory upon the expiration of the 45-day period. However, a penalty may be cancelled by the board of supervisors for excusable delay.

2. The penalty under section 482 is the only penalty authorized for failure to file a statement and may only be applied once. However, if a property transfers more than once during an assessment year, a penalty applies to each instance of noncompliance in reporting the transfers. In addition, an assessor may require an owner of real property to file a property statement, and under Revenue and Taxation Code section 484 failure to comply is subject to penalty as provided in Revenue and Taxation Code section 462.

3. The penalty will be based upon the taxes applicable to the interest transferred during the tax year (July 1 to June 30) in which the 45-day period under section 482 expires. When only a portion of a property changes ownership, the taxes on the roll must be prorated to determine the amount of the penalty.

4. Penalty enrollment procedures are as follows:

- (a) If, on the expiration of the 45-day period under section 482, the then owner of the property is the person who failed to file the statement, the penalty should be added to the roll prepared for the fiscal year during which the 45-day period expires; except that if the 45-day period expires during the period March 1 through June 30 of any assessment year, the assessor has the option of adding the penalty to the roll then being prepared.
- (b) If, on the expiration of the 45-day period under section 482, the then owner of the property is not the person who failed to file the statement, the penalty should be added to the unsecured roll in the name of the person who was required by law to file the statement. The option in (a), above, as to which secured roll may be used, is likewise applicable to selection of the unsecured roll. LTA 2/8/80 (No. 80/19); LTA 6/27/80 (No. 80/102).

220.0541 Penalty for Failure to File Statement.

1. When property transferred consists of more than one assessor's parcel and the assessor has requested a change in ownership statement for the property, noncompliance generates one penalty calculated for the entire property.

2. When two or more separate properties are transferred by a single deed and the assessor has requested separate change in ownership statements for each property, noncompliance with any of the requests would still generate one penalty calculated for all the properties transferred by the deed. LTA 10/24/80 (No. 80/157).

220.0542 Penalty for Failure to File Statement. Revenue and Taxation Code section 482(d) provides that the penalty is to be added to the roll in the same manner as special assessments are. Since special assessments are usually entered on the secured roll, such penalties should be also. C 11/26/82.

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220.0545 **Possessory Interests.** A change in ownership requiring reappraisal occurs upon the creation, renewal, sublease, or assignment of a taxable possessory interest in tax-exempt real property. Where an improvement is privately owned, only the possessory interest in the land is to be reappraised. LTA 3/21/80 (No. 80/48).

220.0546 **Possessory Interests.** A renewal or extension of a possessory interest occurs when the term of possession created by a lease is lengthened regardless of the term of possession used by the assessor for valuation purposes. C 9/25/95.

| 220.0547 **Possessory Interests.** A taxable possessory interest consisting of a month-to-month tenancy in tax exempt real property is renewed each month that no notice to terminate is given. See Civil Code section 1946. C 7/24/95.

220.0548 **Possessory Interests.** The filing of proof of labor with the government in conjunction with mining claims does not transfer a present interest including the beneficial use thereof that is equivalent to the fee interest or create, renew, or extend a possessory interest. By expending labor, money, and filing proof of such, the claim holder unilaterally perpetuates his possessory interest in the claim. The scope of the right does not change, no new rights are created, and merely a condition for continuation of the right acquired when the claim was filed has been satisfied. LTA 6/8/82 (No. 82/77).

220.0549 **Possessory Interests.** The existence of options to renew a lease that creates a possessory interest in tax exempt publicly owned real property does not constitute a basis for reappraising the possessory interest until the option is in fact exercised. The case of *Wrather Port Properties, Ltd. v. Los Angeles County*, 209 Cal.App.3d 517, is not to the contrary but merely holds that the restated term of possession in that particular case was the originally agreed term and not an extension of the term originally expressed in the lease document. C 2/28/91.

220.0550 **Possessory Interests.** When taxable property is purchased by a tax exempt governmental agency pre-existing leases become taxable as possessory interests, assuming that they satisfy the requirements of Property Tax rule 21. Any renewal, extension, sublease or assignment of such a possessory interest is a change in ownership, regardless of the term of possession remaining under the lease; whereas transfers of leasehold interests in taxable property constitute changes in ownership depending on the terms of possession remaining as provided in Revenue and Taxation Code section 61(c)(1) and (2). C 8/9/91.

220.0551 **Possessory Interests.** The lease of tax-exempt land by a school district or other municipal non-assessable district to a public facilities corporation solely owned by the district creates a taxable possessory interest assessable to the corporation but which is excluded from change in ownership under Revenue and Taxation Code section 62(a)(2). The corporation's subsequent sublease of the land to the district would not cancel the possessory interest. The corporation would still have "constructive possession," with the district's possession of the land being pursuant to and subordinate to the corporation's right under the lease.

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Again, however, section 62(a)(2) would apply to exclude the sublease from change in ownership. C 4/20/93. (M99–1).

220.0552 Possessory Interests. The purported transfer of a possessory interest in United States Forest Service land by grant deed is ineffective when the possessory interest was created by a nontransferable government special use permit. Nevertheless, the grant deed is effective to transfer a recreational residence located on the land, to which any available exclusions may apply. When the transferee obtains a new special use permit from the United States Forest Service, however, a new taxable possessory interest in the land will be created for the benefit of the transferee, and that possessory interest will result in a change in ownership under Revenue and Taxation Code section 61(b). C 11/1/96. (M99–2).

220.0553 Possessory Interests. The exclusion from change in ownership under Revenue and Taxation Code section 62(a)(2) is applicable to assignments of possessory interests. The plain language of this section excludes all qualifying proportional interest transfers and does not make a distinction between transfers of fee title interests and leasehold interests. As defined in Revenue and Taxation Code section 61(b)(3), an assignment of a taxable possessory interest is a transfer of all rights in the possessory interest and results in a change in ownership. Consequently, the exclusion set forth in section 62(a)(2) can be and is applicable to an assignment of a taxable possessory interest provided that all the conditions of that subdivision are met. C 6/15/2000. (2002–1).

220.0561 Preliminary Change of Ownership Report. The Preliminary Change of Ownership Report (PCOR) must be filed in situations that involve transfers of real property that are excluded from the definition of change in ownership. Revenue and Taxation Code section 480.4, which enumerates the data to be included in the report, indicates that the information to be provided relates to transfers between spouses and other transfers excluded from reappraisal. C 4/29/88.

220.0565 Probate. Title to a decedent's property usually passes to the heirs as of the date of death. If portions of a property are devised to each of several heirs, each interest would be separately appraised as of the date of death and not at a later time when the heirs cause a subdivision map to be filed. If the property were transferred to creditors rather than to heirs, the change in ownership and reappraisal should be as of the date the creditors took title. Increases in value between the decedent's death and the transfer to the creditors would be included in the reappraised value. C 12/6/84.

220.0568 Probate Homestead. Devisees taking real property subject to a court-ordered probate homestead granted to the decedent's spouse for her lifetime or until her remarriage do not receive the present beneficial use of the property until such homestead is terminated and hence, there is no change in ownership until that time. C 11/5/81.

220.0570 Quit Claim Deed as Security. A quit claim deed made to a court for the purpose of guaranteeing bail is a transfer of a security interest, not a change

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in ownership. If, however, the property is not redeeded to the previous owner, i.e., it is sold to a third party, the property is subject to reappraisal. C 4/2/79.

220.0575 Recombining Parcels. The recombining of parcels which were not divided in compliance with the Subdivision Map Act is not a change in ownership. C 9/8/82.

220.0580 Record Title. In 1985 a man and his wife as joint tenants acquired an undivided 50 percent interest in real property. His mother was shown on the deed as the owner of the remaining undivided 50 percent interest. When the mother died, she left her 50 percent interest to be distributed in equal shares to the man and his three sisters. All four of the survivors contend that the mother's name was on the deed solely to secure the repayment of a loan and that, in fact, the man owned that 50 percent interest in the property.

The presumption that those shown on a grant deed as owners are just that can be overcome only by clear and convincing proof. In this instance, the lack of evidence of the existence of a debt, the mother's action in leaving the interest in the property to all four children, and the failure to contest the mother's will all weigh against the sufficiency of the proof offered to overcome the presumption.

The transfer of the mother's 50 percent interest in the property to the children was probably eligible for the parent/child exclusion; however, the subsequent transfers by the sisters to their brother resulted in a change in ownership as to their collective 37 percent interest, for which there is no applicable exclusion. C 6/5/89.

220.0581 Record Title. In reviewing claims that no change in ownership has occurred because the recorded title to property does not reflect the true ownership of property, the assessor should be guided by the formal legal procedures applicable to the conveyances of real properties and the recordation requirements for listing properties in public records. A conservative viewpoint should be taken when considering assertions that an unrecorded, secretly-held document constitutes a conveyance of property. C 8/3/81.

220.0582 Record Title. Anyone claiming that title to real property is other than as shown on a recorded deed or other instrument of title has the burden of proof of proving that claim. The proof required by Evidence Code section 662 is proof that is clear and convincing, which has been defined as "clear, explicit and unequivocal," "so clear as to leave no doubt," and "sufficiently strong to command the unhesitating assent of every reasonable mind." The submission of an unexecuted partnership income tax return showing an ownership interest in real property, by itself, is insufficient evidence to overcome the presumption that the persons named on the deed are the property owners. C 3/16/88. (M99–2).

220.0583 Record Title. The title presumptions of Evidence Code section 662 and Property Tax Rule 462.200(b) may only be overcome by clear and convincing evidence. Although a conveyance of land is absolute in its terms, and on its face purports to convey an estate in fee, it may nevertheless be shown that the land is held by the grantee in trust; and the terms of such trust may be shown

CHANGE IN OWNERSHIP (Contd.)

by oral testimony. Similarly, establishment of a holding agreement, which requires the existence of a written agreement, is sufficient to overcome the presumptions. C 3/8/2000. (2001–1).

220.0585. **Reporting.** Revenue and Taxation Code sections 480–480.2 mandate that only a person or legal entity acquiring ownership or control of real property or mobile homes subject to local property taxation is required to file a change in ownership statement; therefore, state assessees are exempt from filing change in ownership statements. However, under section 480.3, county recorders may require all transferees, including state assessees, to file a preliminary change in ownership report or pay a \$20 recording fee in lieu thereof. C 4/19/94.

220.0590 **Request for Statement.** The request for a change in ownership statement may come from the assessor or a designated county officer. Distribution by a private firm, e.g., a title company, does not constitute an official request. The 45-day period under Revenue and Taxation Code section 482 commences upon the issuance of the request. LTA 2/8/80 (No. 80/19); LTA 6/27/80 (No. 80/102).

220.0594 **Rescission.** Civil Code section 1688 et seq. provides for rescission of contracts, including contracts for the transfer of real property. When a contract for the transfer of real property is rescinded based upon consent of the parties, rescission must be evidenced by a written notice of rescission signed by the parties to the contract, which should be provided to the assessor. At the same time that a rescission occurs, a rescission deed or a reconveyance of title should also be recorded with the county recorder's office. The provisions of the Civil Code do not require court approval or a court order for rescission to be valid when the parties to the contract mutually agree to rescind. Rescission of a transfer of real property relates back to the formation of a contract and dissolves it as though it had never been made. Thus, once a contract is rescinded by mutual consent, the parties are placed in the same position they were in before the contract was executed. The value of the real property reverts to its previous base year value with appropriate adjustment(s) for inflation. However, in the context of property taxes, rescission has only prospective application; no refund of taxes is available to the parties for the period of time under which a conveyance is treated as a change in ownership, as the conveyance was effective for that period of time. C 5/31/2007. (2008–1).

220.0595 **Rescission.** A rescission relates back to the formation of a contract and dissolves it as though it had never been made. Thus, once a contract for the sale of real property is rescinded by mutual consent, the parties are placed in the same position they were in before the contract was executed, and the value of the real property reverts to its previous base year value with appropriate adjustment(s) for inflation. However, taxes incurred after the contract had been executed and before it was rescinded remain owing since they have become owing because of the facts which existed on the applicable lien date(s), and no refund(s) thereof should be made. C 1/16/85.

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220.0596 **Rescission.** A transfer of real property by a deed which is voidable because it was obtained by means of undue influence results in a change in ownership, but upon the cancellation of the deed by judicial decree, which does not constitute a change in ownership, the value of the property reverts to its previous base year value with appropriate adjustment(s) for inflation. C 12/9/83.

220.0597 **Rescission.** A court judgment rescinding a transfer of real property accomplishes conveyance of the property back to the original owner. No additional instrument or conveyance is needed, and the property should be assessed to the original owner, whether or not the judgment is recorded with the county recorder. Although the base year value for the year in which the property was originally transferred is re-established and enrolled at such value plus appropriate inflation adjustments, no refunds should be made for the interim years. C 8/14/87; C 1/23/87; C 6/5/86. (Am. 2002-1).

220.0598 **Rescission.** When an assessor recognizes a rescission of an installment sale contract, the former base year value is enrolled as of the following lien date. Although the notice to rescind may be recorded in February, prior to the delivery of the assessment roll to the auditor on July 1, property taxes become fixed as of the prior January 1 lien date. The July 1 date is simply a deadline for completion of the roll and has no bearing on the tax liability that becomes final on the lien date prior to the rescission.

Additionally, an assessor has no authority to make a supplemental assessment to reinstate the original base year value because supplemental assessments may be made only upon the occurrence of a reappraisable event (i.e., change in ownership or new construction). A rescission is not a reappraisable event; it merely restores the parties to their positions prior to the contract. C 2/8/2001. (2002-1).

220.0599 **Rescission.** Parties to a contract of sale may, on their own accord, mutually consent to the rescission. The provisions of the Civil Code do not require a court order or approval for a contract rescission to be valid when the parties to the contract mutually agree to rescind.

There is no minimum passage of time necessary in order to recognize a change in ownership of property, even if the transfer is later rescinded. Revenue and Taxation Code section 75.11(c) provides for the enrollment of net supplemental assessments when there are multiple changes in ownership of property during the same assessment year. Although Revenue and Taxation Code section 75.41(b) requires an auditor to compute the supplemental tax liability according to a proration factor which presumes that a change in ownership event occurred on the first day of the month following the actual event date, this section does not conflict with nor impact an assessor's duty to issue supplemental assessments, including net supplemental assessments, in accordance with section 75.11(c). The computation of supplemental tax liabilities is distinct from an assessor's obligation to enroll the supplemental assessments related to the change in ownership of a property. C 6/29/2001. (2002-1).

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220.0600 **Rescission.** A lease with a term of 35 years or more is treated as a transfer of the beneficial interest in the real property for change in ownership purposes. The rescission of a 35-year lease relates back to its formation and dissolves the lease and the resulting transfer as though it had never been made. For assessment purposes, a rescission has the result of returning the parties to a transaction to their original positions prior to the reappraisal of the property taking effect, so that the property reverts to its previous base year value with appropriate inflation factor adjustments. However, a rescission can only be applied prospectively; no refund of taxes is available to the parties for the period of time during which the transfer is treated as a change in ownership. C 12/11/2003. (2005–2).

220.0605 **Resulting Trust.** A transfers real property to B and B subsequently transfers it to C by executing a quit claim deed. C claims to be the actual purchaser from A and that B was merely the holder of the legal title which was relinquished on request. There are two bases for concluding B's transfer was not a change in ownership.

When title to property is transferred to a person other than the one who paid the purchase price, the law presumes a trust results even through no trust terminology is used in the transfer document.

Additionally, while Evidence Code section 662 provides that the owner of the legal title to real property is rebuttably presumed to be the owner of the beneficial title, this presumption may be rebutted by clear and convincing proof, such as the source of the purchase funds, the source of funds used to pay property taxes,

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maintenance and repair, and evidence of the treatment of the property for state and/or federal income tax purposes. C 8/25/92.

220.0610 Revocable Grant Deed. The transfer of real property by a revocable grant deed, reserving a life estate in the transferor or in the transferor's spouse, is within the Revenue and Taxation Code section 62(e) exclusion. C 6/9/93.

220.0615 Revocable Trust. Under Civil Code section 852, which provides that no trust in relation to real property is valid unless created or declared:

1. By a written instrument, subscribed by the trustee, or by his agent thereto authorized by writing;
2. By the instrument under which the trustee claims the estate affected; or
3. By operation of law; and

Code of Civil Procedure section 1971, which provides, in part, that no estate or interest in real property nor any trust over or concerning it can be created, granted, or declared, otherwise than by operation of law, or a conveyance or other instrument in writing, subscribed by the party creating, granting, or declaring the same, an express trust with respect to real property is required to be in writing, subscribed by the trustor or trustee. This is the only manner in which a trust in real property can be created, except by operation of law. C 10/10/80.

220.0620 Sale and Leaseback Transactions. The facts of a situation will determine whether a sale and leaseback agreement is a financing arrangement or a true sale. As a general rule, if the property was sold and immediately leased back to the former owner, and under the terms of the agreement the property did not revert to the lessee upon the final lease payment or the lessee did not have the option to purchase the property for a nominal amount at the end of the lease term, the sale would constitute a change in ownership. C 7/11/80.

220.0621 Sale and Leaseback Transactions. It has been the Board's long-standing position that sales and leasebacks constitute changes in ownership requiring reappraisal of the entire properties sold. If a leaseback is for a term of 35 years or more, a second change in ownership occurs.

Revenue and Taxation Code section 62(e) excludes from change in ownership only transfers that involve a true retention by the transferor of a present interest in the property and a conveyance to the transferee of only a future interest. In the case of a sale and leaseback, the purchaser receives title to the property, and the right to a possession. The fact that the parties agree that the purchaser will lease the property to the former owner in no way diminishes the purchaser's ownership interest any more than would a lease not preceded by a sale. Rather, the leasing of the property to the former owner is merely the exercising of the right to possession, a present beneficial use, in exchange for the payment of rent. LTA 12/5/85 (No. 85/128); LTA 8/8/86 (No. 86/57); LTA 1/31/92 (No. 92/11).

220.0622 Sale and Leaseback Transactions. The lease of property by a corporation to a wholly owned subsidiary for a term of 50 years followed by a sale of the same property to an unrelated purchaser is a sale and leaseback when the transfers are dependent upon one another and essentially simultaneous.

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Rather than a reservation of a life estate or a short-term estate for years, this transaction was intended to transfer the title and ownership benefits (collection of rents) to the purchaser. The three tests of “end result,” “interdependence” and “binding commitment” applicable under the “step transaction” doctrine were satisfied, and reappraisal was required. C 12/9/92.

220.0623 Sale and Leaseback Transactions. Evidence Code section 662 provides that the owner of legal title is presumed to be the owner of the full beneficial title and that the presumption may be rebutted only by clear and convincing proof.

When the lease specifically provides that the transaction constitutes “. . . a bona fide purchase and lease of the property . . . and shall not be construed to be a financing transaction for any purpose whatsoever. . . .”, the presumption is not rebutted, regardless of statements outside the lease to the contrary. C 3/7/89.

220.0624 Sale and Leaseback Transactions. In a situation where a purchaser of property leases it back to the seller for his/her lifetime, there is a change in ownership. The transaction is different than one in which the seller transfers title while reserving a life estate. In the latter instance, the seller retains all present interest in the property.

Even though a sale is conditioned upon a lease back, contains a prescription against a resale without the lessee’s approval, and contains prohibitions preventing the purchaser from using the property or raising the rent, the transfer should result in a reappraisal. These contractual limitations do not qualify as enforceable restrictions that are governmentally imposed and required to be taken into account by Revenue and Taxation Code section 402.1. C 12/22/87.

220.0625 Sale and Leaseback Transactions. If an owner of real property sells it and leases it back for a period of more than 35 years, he is treated as the property owner for change in ownership purposes. Should the original owner, now lessee, repurchase the property while there is still 35 or more years remaining on the lease, no change in ownership occurs. He merely retrieves legal title to property he is considered to already own for change in ownership purposes. C 3/23/87; C 5/12/87.

220.0635 Sales Contract or Lease With Option. A “Lease With Option to Purchase” may, in fact, be a contract of sale. Consideration must be given to the terms and conditions of the document. Where it is determined that a contract of sale exists, the date of the change in ownership is the date of execution or, where conditional, the date the condition has been fulfilled. C 10/17/80.

220.0640 Section 1031 Exchange/Holding Agreement. Revenue and Taxation Code section 60, as interpreted by Property Tax Rule 462.200(c), requires that the transfer of real property to a “straw man” in a transaction paralleling the IRC 1031 exchange provision does not include the transfer of any equitable or beneficial interest in the property. The “straw man” merely holds “legal title” to the property, with the result that there is no change in ownership at this point. However, when the “straw man” subsequently transfers title to a buyer who

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receives the “present beneficial ownership” of the property per section 60, there is a change in ownership and reappraisal. C 6/5/97. (M99-1).

220.0645 Security Interest Termination. The termination of a security interest, e.g., bare legal title held by parents jointly with a son solely for loan qualification purposes, is not a change in ownership, and where such can be shown to have existed, reappraisal is not required upon parents’ quit claim of the property back to the son. The facts in each particular case are determinative. The best evidence is a written agreement between the parties executed prior to or at the time of the initial conveyance of the property indicating that the parents had no equitable interest in the property. C 9/26/80.

220.0646 Security Interest Transfers. The use of a trust arrangement to protect the interest of a “beneficiary” who obtains refinancing for property owned and occupied by the nominal trustor does not result in a change of ownership if the tests contained in Property Tax rule 462(k) are satisfied, thereby overcoming the Civil Code section 1105 rebuttable presumption that a conveyance (including one made to a trust) is what it is purported to be; i.e., a transfer of property. C 4/30/91.

220.0647 Security Interest Transfers. The Civil Code provides that there is a rebuttable presumption that a conveyance is what it is purported to be, a transfer of property. The person contending that a conveyance is only for financing purposes has the burden of proving that contention.

Proof that a transfer was of a security interest only would include facts such as:

(1) The transferor received a “purchase price” reflecting his book value rather than current market value; the amount of rent charged the transferor for the use of the “transferred” property was less than market rent; and the transferor retained all tax benefits, rights to proceeds from insurance, and all of the burdens of ownership, including the cost of maintenance and operating costs.

(2) The transferee had to retransfer the property to the transferor upon payment of the “purchase price” and could not gain or lose money from its “ownership” of the property, and it was without other assets or sources of income.

As provided in Property Tax rule 462(k)(4), a written ruling by the Franchise Tax Board or Internal Revenue Service that a transfer was considered a financing transaction for income tax purposes would create a presumption that a transaction was a nonreappraisable sale and lease back. C 7/29/87.

220.0648 Security Interest Transfers. Property Tax Rule 462.200(a) specifically addresses the situation in which a transaction may be interpreted to be either a conveyance of real property or a mere security interest therein. A written agreement that makes no mention of a “debt or promise to pay” and that consistently refers to the parties’ interests in the property as ownership interests indicates a co-ownership relationship rather than a lender/borrower relationship. C 6/20/2000. (2002-1).

220.0649 Security Interest Transfers. A conveyance of real property by grant deed from individuals to a housing cooperative and a subsequent reconveyance

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by land contract secured by a deed of trust from the cooperative to the individuals are both rebuttably presumed to transfer the present beneficial interest in the property, resulting in changes in ownership. However, pursuant to Property Tax Rule 462.200(a), the presumption may be rebutted if, in the assessor's judgment, it is shown by clear and convincing evidence that the individuals intended to retain the present beneficial interest in the property, and that the grant deed transferred mere legal title to the cooperative as part of a security transaction. C 12/5/2000. (2002–1).

220.0650 State Chartered Stock Association. The conversion of a state chartered stock association to a federal chartered stock association does not result in the discontinuance of the former and the transfer of its assets to a new association and hence, is not a change in ownership. The state chartered stock association merely continues in existence with a new charter and name. C 9/23/81.

220.0655 Statement Confidentiality. Revenue and Taxation Code section 481 provides, in part, that these statements are not public documents and are not open to inspection, except as provided in Revenue and Taxation Code section 408. The latter section allows for release of confidential information, including that contained in change in ownership statements, to only law enforcement agencies, the county grand jury and the board of supervisors or its agents in certain circumstances. C 4/18/89.

220.0660 Statement Filing Requirements. Whenever there is a change of control or a change in ownership of a legal entity, Revenue and Taxation Code sections 480.1 and 480.2 require that a "Statement" of such change be filed, whether or not a change in the ownership of real property has occurred. Failure to file a completed statement after a written request has been made by the State Board of Equalization may result in penalty as provided in Revenue and Taxation Code section 482(b). C 4/14/88.

220.0661 Statement Filing Requirements. Intermediate transferees, i.e., those who are transferors and transferees, are excused from filing a "Preliminary Change of Ownership Report." They must, however, file the change in ownership statement required by Revenue and Taxation Code sections 480 and 482 whether or not the assessor may determine that, in fact, no change in ownership occurred. C 7/16/92.

220.0664 Statutory Conversion. Statutory conversion of a general partnership into a limited partnership is not considered a transfer for purposes of change in ownership and the partners do not become "original coowners" after the conversion. C 8/27/99. (2001–1).

220.0665 Step Transaction. A sale by a parent corporation and a lease-back to the parent by the wholly owned subsidiary corporation for a period in excess of 35 years followed by a sale by the subsidiary of its interest in the property to a third party results in a reappraisal of the entire property. While the sale and lease-back would be ignored as involving transfers between affiliated

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corporations, the subsequent transfer to a third party was apparently contemplated from the outset and by application of the “step transaction” doctrine would be considered in substance, a transfer by the parent corporation to the third party. C 5/10/91.

220.0666 Step Transaction. Whether a series of transfers constitute for tax purposes one or several transactions is a question of fact. The proper classification is made by application of three alternative court sanctioned tests, to wit: the

- (a) binding commitment test,
- (b) interdependence test, and
- (c) end result test.

If at the time the first step is taken there was a binding commitment to take a later step(s), or if the first step would have been fruitless without the completion of the series, or if the ultimate or end result was intended from the outset, a conclusion that a series of transfers constituted a single transaction for “change of ownership” purposes is warranted. C 3/8/90.

220.0667 Step Transaction. Judicial decisions have indicated that it is proper to apply the substance over form or step transaction doctrine to property transfers that accomplish a change in ownership in multiple steps in an attempt to avoid reappraisal. The doctrine is applicable even if the various steps accomplish a business purpose other than avoidance of increased taxes.

The exception to the general rule is found in the legislative intent language of section 2 of Chapter 48 of the Statutes of 1987 (Revenue and Taxation Code section 63.1), which provides, in substance, that the parent/child exclusion applies to transfers by eligible transferors to eligible transferees even if such transfers are immediately followed by a transfer to a corporation, partnership, trust or other legal entity if the transferee(s) is/are the sole owner(s) of the entity. The Board’s legal staff is of the opinion the same result should follow when an eligible transferor’s parents or children also own interests in the entity. Subsequent transfers of ownership interests among the children or to non-eligible transferees would constitute a change in ownership if one person or entity obtained a majority interest in the entity or if more than 50 percent of the total ownership interests were transferred. C 4/5/88.

220.0668 Step Transaction. A transfer of property from A, B, and C, tenants-in-common, to A, B, and C as joint tenants, followed immediately by a transfer from A and B to C results in a change in ownership of A’s and B’s tenancy-in-common interests to C. Although the transfers appear to fall within the exclusionary provisions of Revenue and Taxation Code sections 62(f) and 65, the initial transfer should be ignored because it was contemplated from the outset that C would receive A’s and B’s interests and because the transfer was made to circumvent the intent of the change in ownership statutes. C 12/24/81.

220.0669 Step Transaction. A transaction involving several steps whereby land owned originally by parents is ultimately transferred to a newly formed family

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partnership is not insulated from the application of the step transaction doctrine under section 2, Chapter 48 of the Statutes of 1987, where the family partnership is held indirectly by the grandchildren as well as by the parents and children through trusts and corporations. C 2/28/95.

220.0670 Step Transaction. In *Shuwa Investments Corp. v. County of Los Angeles* (1991) 1 Cal.App.4th 1635, the District Court of Appeal rejected the theory that a series of transfers that result in a change in ownership may be ignored if each of the transfers in the series is not a change in ownership and each transfer can be demonstrated to have taken place for a business purpose independent from the avoidance of increased property taxes.

The court applied the long accepted principle that for tax purposes, the substance rather than the form of a transaction controls when the substance brings the transaction within those intended to be taxed by the law. However, form will control over substance when it results in a change in ownership consistent with the legislative intent of a given statute.

In determining whether the form of the particular transfer should be subject to the step transaction doctrine, the court applied the following tests:

1. The “end result test” (whether the reported separate transactions were really component parts of a single transaction intended from the outset to be taken for the purpose of reaching the ultimate result).
2. The “interdependence test” (whether upon a reasonable interpretation of objective facts the steps are so interdependent that the legal relations created by one transaction would have been fruitless without a completion of the series).
3. The “binding commitment test” (whether there is a binding commitment to take all steps if the first step is taken). LTA 10/14/92 (No. 92/69).

220.0671 Step Transaction. When, through a series of transfers, a person owning an 80 percent interest in a partnership becomes the sole owner of property formerly owned by the partnership, reappraisal of 100 percent of the property occurs pursuant to Revenue and Taxation Code section 61(i). C 6/16/94.

220.0672 Step Transaction. A transfer of real property by a dissolving partnership to the partners as tenants in common in the same proportion as their respective partnership interests is excluded from change in ownership under Revenue and Taxation Code section 62(a)(2). Subsequent transfers of interests in the real property among the tenants in common is a change in ownership only to the extent of the interests transferred, unless the step transaction doctrine applies.

If the evidence before the assessor demonstrates that the partners intended to dissolve their business relationship and transfer disproportionate fee simple interests in the property to themselves, the transfers would be stepped together, resulting in a change in ownership and reappraisal of the entire property. (See *Munkdale v. Giannini* (1995) 35 Cal.App.4th 1104.)

However, the step transaction doctrine does not permit the assessor to change the order of the steps in a series of transfer. It would be improper for the assessor to presume that partnership interests, rather than real property interests, were

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transferred and that the result was a change in control of the partnership under Revenue and Taxation Code section 64(c). C 1/3/90; C 5/6/97. (M99-1).

220.0673 Step Transaction. A partnership conveyed multiple parcels of land to its two former partners as individuals so that one person took sole title to some parcels while the other took sole title to the remaining parcels. Because these transfers were not proportional, the assessor reassessed all the parcels. Upon discovering the reassessments, the former partners rescinded those transfers by reconveying the parcels of land back to the partnership. Acknowledging the rescission, the county assessor returned those parcels of land to their original base year values. (2008-1).

220.0674 Step Transaction. Two separate family trusts, S Trust and J Trust, are each 50 percent partners in a partnership which owns real property. Upon the death of one of the trustees, S Trust's interest in the partnership was transferred to two trusts: Trust A and Trust B. The surviving spouse is the trustee and beneficiary of both trusts. Subsequently, the partnership was required to convey the property out of the partnership to obtain financing. The real property was transferred to the J Trust and Trusts A and B as tenants in common in the same proportional interests. Now Trusts A and B are considering purchasing the interest owned by the J Trust.

The step transaction doctrine allows an assessor to disregard for tax purposes a series of steps utilized to effect the transfer of real property when the facts suggest that the transfer might have been accomplished in fewer steps and that the purpose for using a series of steps was to avoid a change in ownership. If the facts indicate that the transfer out of the partnership was motivated solely by the lender's requirement for the purpose of obtaining a loan against the property and not some other reason, then the step transaction should not be applied. C 3/9/2006. (2007-1).

220.0690 Subdivision Map. The filing of a subdivision map for division of property into separate parcels is not, by itself, a change in ownership. C 2/7/80.

220.0695 Tax Delinquency. No change in ownership occurs where an assessee regains his property through the redemption procedure of filing an application to redeem, paying the taxes, penalties and costs, and obtaining a redemption certificate, but a change in ownership does occur where the assessee regains his property by purchase at a public auction under Revenue and Taxation Code section 3693. C 10/6/82.

220.0700 Tax Exempt Property. The transfer by a tax exempt government entity of its owner/lessor interest in property subject to a lease of more than 35 years does not result in a change in ownership for reappraisal purposes. C 10/16/89.

220.0705 Tenant Constructed Improvements. When a tenant under a land lease of more than 35 years is obligated to construct improvements, title to which vest in the lessor on the termination of the lease, the tenant's interest in the improvements is properly characterized as an estate for years.

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If the tenant's estate for years is transferred to a third party, e.g., via a stock transfer, when less than 35 years remain on the lease, no change in ownership occurs. C 8/29/91.

220.0710 Time-Sharing. Persons having a time-share “lot” are joint owners of the property and therefore have an undivided interest in that property. Revenue and Taxation Code section 65(b) governs the reappraisal of this form of ownership, and the less than five percent rule for undivided interests is to be applied. C 5/19/80.

220.0711 Timeshare Interests. Where under an agreement/contract, individual owners of timeshare interests transfer legal title to their timeshare interests to an association (a not-for-profit corporation) in exchange for “points” to become “founding members” in the association, and then use their “points” to vacation at their original timeshare locations or at other vacation properties in the association, there is no change in ownership. The transfers constitute transfers of bare legal title only and, under section 60 would not result in changes in ownership of the beneficial interests in the timeshare intervals. C 1/31/2002. (2003–1).

220.0715 Title Perfection. Revenue and Taxation Code section 62(b) excludes from change in ownership a transfer for the purpose of perfecting title to the property. While the owner of the legal title to property is presumed to be the owner of the full beneficial interest, this presumption may be rebutted by clear and convincing evidence. Property Tax Rule 462.200(b)(2) sets forth the types of documentary proof that may constitute such evidence. The recording of a deed to reflect a change in title from an unrecorded 1969 decree of distribution should not result in a change in ownership. C 5/2/2006. (2007–1).

220.0720 Tracking Undivided Ownership Interests. Revenue and Taxation Code section 50 requires that valuation on the first lien date following a change in ownership of real property must be accomplished by treating each fractional interest separately to determine whether the base year value or current market value is the lower amount. Section 51 controls the taxable value for all lien dates following the lien date on which the base year value is first enrolled. Thus, if A and B owned real property as equal co-owners, A's base year value for the 1985–86 tax roll was \$50,000 and B's base year value therefor was \$75,000 (\$125,000 enrolled value), and B sold his one-half interest to C in November of 1985 for \$90,000, an amount representative of market value:

1. The value of the entire property would then be \$180,000.
2. The new base value of the property as of the date of transfer of B's interest would be \$140,000 (A's \$50,000 plus C's \$90,000).
3. The supplemental assessment to the 1985–86 roll would be \$15,000 (\$140,000 minus \$125,000).

If as of March 1, 1986, the fair market value of the entire property had declined from \$180,000 to \$160,000, the value placed on the 1986–87 tax roll would be \$131,000 (the factored base year value of A's interest—\$50,000 × 1.02, plus the

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fair market value of C's interest on the lien date—\$80,000). Assuming that the decline in value was being measured as of March 1, 1987, the value placed on the 1987–88 tax roll would be \$142,800 ($\$140,000 \times 1.02$). Since the current market value of the entire property (assume \$160,000, the same as on March 1, 1986) is greater than the factored base year value, the factored base year value would be enrolled. LTA 8/19/85 (No. 85/85); LTA 1/8/86 (No. 86/4).

220.0725 Transfer “in Lieu of Foreclosure.” An execution of a grant deed back in lieu of foreclosure is a change in ownership because the beneficial ownership is being transferred from one party to another. C 2/27/80.

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220.0730 Transfer of Future Appreciation. The transfer of a right to receive future appreciation in real property does not create a future interest in a fee or the substantial equivalent of a fee and hence, does not constitute a change in ownership. C 6/30/82.

220.0740 Transferable Development Rights. In *Mitsui Fudosan v. Los Angeles County* (1990) 219 Cal.App.3d 525, the court held transferable development rights to be taxable real property interests which, when conveyed, result in a change in ownership requiring reappraisal. The property to which the rights were previously appurtenant should have its base year value reduced in the same proportion that the value of the transferred rights bore to the fair market value of the land and improvements from which they were transferred as of the date of the transfer. LTA 2/11/91 (No. 91/12).

220.0745 Transfers Between Co-owners. The “transfer between co-owners” exclusion is available even though a transfer may not be completed in one assessment year. C 10/2/80.

220.0760 Trusts.

1. Revenue and Taxation Code section 62(d) excludes trusts because of the type of trust. There is no limitation as to who may be the trustee.

2. Section 62(d) excludes from change in ownership property transferred into:

(a) A revocable trust, or

(b) An irrevocable trust if the transferor is a present beneficiary of the trust.

If a trust does not meet either of these qualifications, there will be a change in ownership whenever property is transferred into a trust.

3. Section 62(d) makes no mention of community or separate property. The interspousal exclusion (Revenue and Taxation Code section 63) applies to all transfers between spouses whether the property is separate property or community property.

4. Section 62(d) excludes from reappraisal creation or termination of a trust in which the trustor retains the reversion and in which the interest of others does not exceed 12 years duration. It makes no difference who the trustee is.

5. Revenue and Taxation Code section 61(g) provides that any interest in real property which vests in persons other than the trustor (or pursuant to section 63, his spouse) when a revocable trust becomes irrevocable is a change in ownership. Where the Settlor is husband and wife, on the death of one of them, for any portion of a trust that vests in the spouse there will be no change in ownership until he or she dies, but for the other portion, there will be a change in ownership upon the death of the first Settlor. C 1/15/80.

220.0761 Trusts. The general rule is that there is only one change in ownership for property transferred in trust. This occurs either upon transfer into trust or upon distribution to the beneficiaries. Following this rule, the owners of the property are construed to be the trustor, when there is no change in ownership, or the

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equitable beneficiaries, when there is a change in ownership. The trustee is never viewed as the owner of the trust property. This is so even if the trustee has legal title and the power to sell. C 7/14/80.

Note: Civil Code section 869a is now Probate Code 18104.

220.0762 Trusts. As to a surviving spouse's beneficial interest in the property of a "B" trust in an "A-B" trust, where the "A" trust is used to hold the assets which qualify for the marital deduction and the "B" trust is used to hold the balance of the assets:

1. For the property which passes to the "B" trust to qualify for the interspousal exclusion, the surviving spouse must be the sole present beneficiary of the trust. Upon the death of the second spouse, the property will be subject to reappraisal.

2. The trustee may have the discretion to distribute or accumulate income.

3. If the trustee has the discretion to distribute income among the surviving spouse and others, the surviving spouse is not the sole present beneficiary of the trust, and the property cannot qualify for the interspousal exclusion. C 8/31/81.

220.0763 Trusts. Property Tax rule 462(i)(2)(A) is applicable to any transactions occurring on and after March 1, 1975. C 7/9/82.

220.0764 Trusts. A trustor's transfer of real property to a trust does not constitute a change in ownership if the trustor or the trustor's spouse is the sole present beneficiary thereof. C 5/24/82.

220.0765 Trusts. A change in ownership occurs when a revocable trust becomes irrevocable. However, if all the beneficiaries of the trust are the wife and children of the settlor, then the change in ownership may be excluded under the interspousal and parent-child exclusions, even if the trustee has the power to invade the trust principal for the benefit of some or all of the beneficiaries. C 5/27/97; C 11/5/99. (M99-1; Am. 2000-2).

220.0766 Trusts. The transfer of real property to an irrevocable trust in February for 12 years and 5 months is a change in ownership because the term was in excess of 12 years, and "retroactive" amendment of the trust in December to reduce the term to 11 years and 11 months so as to bring the transfer within the exclusionary provisions of Revenue and Taxation Code section 62(d) is not a bar to the reappraisal made as of the prior March 1. C 2/23/83.

220.0767 Trusts. When a parent transfers property to a trust which provides that the children are to receive the trust assets on a share and share alike basis, unless the trust instrument specifies otherwise, the trustee has the power to distribute the property on a pro rata or non-pro rata basis. The distribution of sole ownership of a single asset to one child would qualify for the parent-child exclusion, except to the extent the value of the asset exceeds the value of that child's interest in the total trust estate. Such excess must be considered a non-excludable transfer from the other beneficiaries pursuant to a sale of their interests to the recipient. C 8/6/90; C 9/10/96; C 3/14/2000. (Am. M99-1; 2000-2).

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220.0768 **Trusts.** A transfer of property to an irrevocable trust or to a revocable trust followed by a transfer to a beneficiary who is the child of the trustor(s) can qualify for the parent/child exclusion of Revenue and Taxation Code section 63.1. C 9/4/87.

220.0769 **Trusts.** The trustee of an irrevocable trust which holds capital and profits interests in a limited partnership does not have direct or indirect ownership of those partnership interests, except to the extent that he is also the present beneficiary of the trust. Where a partner, as an individual, owns a 40 percent partnership interest and four irrevocable trusts, in which the partner is trustee, each own a 10 percent partnership interest, the partner does not, thereby, hold a majority ownership interest in the partnership. The present beneficiaries of each trust and not the partner as "trustee," are the "owners" of the trusts' respective partnership interests. For purposes of Revenue and Taxation Code section 64(c), if the partner acquires an additional 15 percent of the partnership interests from the trusts, there would be a change in control of the limited partnership, since the partner would have obtained more than 50 percent of the total capital and profits interests. C 12/11/91. (M99-1).

220.0770 **Trusts.** The transfer of property to an irrevocable trust is not a change in ownership if the transferor/settlor is the sole beneficiary of the trust. On termination of the trust, either because of the death of the sole beneficiary or the passage of a time period specified in the trust instrument, a transfer to an "eligible transferee" son or daughter is excluded from change in ownership under Revenue and Taxation Code section 63.1 if all the other requirements for exclusion are met. If the contingent beneficiary son or daughter does not survive the expiration of the trust and the trust assets transfer to the child's estate, the parent/child exclusion is inapplicable. C 9/28/90.

220.0771 **Trusts.** A trust beneficiary who exercises a general power of appointment (transfer) in favor of his/her spouse and children qualifies the transfers for the appropriate interspousal or parent/child exclusion. C 12/26/90.

220.0773 **Trusts.** When multiple testamentary trusts are created with each holding an undivided interest in real property, the surrender by the beneficiary of one or more of the trusts of his or her interest(s) in the property in favor of one of the other beneficiaries is a change of ownership to the extent of the interest(s) surrendered. C 3/18/91.

220.0775 **Trusts.** A trustee's discretionary power to invade principal for the benefit of the remainder beneficiaries does not preclude the applicability of the interspousal exclusion where the surviving spouse is entitled to receive all of the trust income during his lifetime under the terms of the trust instrument. Interests created by powers of appointment are characterized as "future" interests, as opposed to "present" interests and therefore, do not affect the present beneficiary's enjoyment of the trust principal, except in certain cases for determining the amount of the \$1,000,000 parent-child exclusion. C 6/16/95; C 1/20/2000. (Am. 2000-2).

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220.0776 **Trusts.** The termination of a trust, or a portion thereof, constitutes a change in ownership at the time of the termination of the trust. Probate Code section 15407 provides that a trust terminates when the term of the trust expires, the trust purpose is fulfilled, the trust purpose becomes unlawful, the trust purpose becomes impossible to fulfill, or the trust is revoked. On termination of the trust, the trustee continues to have the powers reasonably necessary under the circumstances to wind up the affairs of the trust. C 6/1/90. (M99-1).

220.0778 **Trusts.** Upon the husband's death in 1976, his one-half interest in the community property went into a "Residual Trust" and the wife's one-half interest therein went into a "Marital Deduction Trust". The surviving children were the "Residual Trust" beneficiaries, with limitations on the timing and amount they could receive. The principle was to be distributed to them upon the youngest child's attaining a specified age. The wife was to receive income from the "Residual Trust" before the children *if* the amount she received annually from the "Marital Deduction Trust" was less than a specified sum.

Under these facts, the son and daughter became vested present interest beneficiaries in the "Residual Trust" in 1976, while the wife received only a contingent interest therein. Thus, the son and daughter obtained beneficial title to the property in the "Residual Trust" prior to the time the change in ownership statutes were enacted, and the subsequent transfer of bare legal title to the property to them in 1985 was covered by the exclusion contained in Property Tax rule 462(i)(4)(A). C 2/2/89.

220.0779 **Trusts.** An Individual Retirement Account (IRA) is a trust established, as its name implies, by an individual to provide income to the individual during his/her retirement years. Such an account does not qualify as an employee benefit plan ". . . established or maintained by an employer or by an employee organization, or by both. . . .", as is required by federal law. (29 U.S.C.A. Sec. 1002 (1)(2)(A).)

Transfers of real property to an IRA do not come within the exclusion from change in ownership provided by Revenue and Taxation Code section 66(b). C 2/14/91.

220.0780 **Trusts.** The creation of a life estate in property or in all of the income from that property constitutes a change in ownership unless a specific statutory exclusion applies. Likewise, on the termination of the first life estate, a second life estate, whether in the property or in all of the income it generates, may be created and constitute a change of ownership or not, again depending on the applicability of the various statutory exclusions. C 7/28/89; C 1/20/2000. (Am. 2000-2).

220.0781 **Trusts.** The transfer of real property by a trustee to a partnership owned by the trust followed by transfers of partnership interests to the beneficiaries as they reach ages specified in the master trust instrument do not constitute changes in ownership. The transfer to the partnership constituted a

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change in the manner in which title to the property was held, and the distributions to the beneficiaries were transfers of legal title to the beneficial owners of the property. C 1/23/89.

220.0782 **Trusts.** The filing of a subdivision map so that property held in an irrevocable trust may be distributed to the beneficiaries of the trust is not a change in ownership. The distribution of the property would be such a change unless the property was reappraised at the time the trust was created or distribution resulted only in a change in the manner in which the beneficiaries held title to their respective interests. Statutory exclusions enacted subsequent to the creation of an irrevocable trust have no application unless specifically stated to be applicable. C 12/13/89.

220.0783 **Trusts.** A revocable trust, whose sole owner is grantor, owns a 50 percent interest in a general partnership and 100 percent interest of shares of a

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corporation. When the corporation purchases a 40 percent interest in the partnership from another partner, a change in ownership of the partnership occurs and the entire partnership real property should be reappraised. Through the corporation's purchase, the grantor has acquired indirect ownership and control of more than 50 percent of the total interest in the partnership capital and profits under Revenue and Taxation Code section 64(c). C 8/12/88. (M99-1).

220.0784 Trusts. Upon the dissolution of a corporation and the distribution of its property to testamentary or non-testamentary trusts holding its shares of stock, the proportionality rule applicable to corporate transfers of property to individual shareholders applies, i.e., the trusts must receive proportional interests in each property distributed, not equivalent interests in separate properties. C 12/13/88.

220.0785 Trusts. A trust established for the benefit of a survivor spouse and thereafter, for the benefit of the trustor's children creates a future interest in the children. The present beneficiary spouse could transfer property to and receive property from the trust without reappraisal. Transfers from the trust to the children on or after November 6, 1986 would be eligible for the parent/child exclusion. C 6/19/87.

220.0786 Trusts. Mother transferred her properties into a testamentary trust, which directed that after her death all income from the properties would be distributed semi-annually to her five sons in equal shares, and that upon each son's death, his beneficial interest would be re-allocated in equal shares to the surviving sons, until only one son remained. Upon the death of the fourth son, the trust ceased, and the trust properties would be distributed one-half to the surviving son and one-half in equal shares to Mother's grandchildren.

Upon the death of each son, his lifetime interest in the trust property terminates and transfers by prior directive of the transferor/Mother to the other surviving sons and, ultimately, to her grandchildren. Since Mother is the transferor, either the parent/child exclusion or the grandparent/grandchild exclusion may apply to exclude each of the transfers from change in ownership provided that all of the requirements of Revenue and Taxation Code section 63.1 are met. C 2/8/99. (M99-2).

220.0787 Trusts. If cash held by irrevocable trusts is used to purchase ownership interests in legal entities, then the present beneficial interests in those ownership interests become vested in the trusts. Termination of the trusts and distribution of the ownership interests in the legal entities to the respective present beneficiaries as individuals are not transfers of the present beneficial interests in the properties held by the trusts and, therefore, no changes in ownership occur. Furthermore, because the beneficiaries hold the present beneficial interests in the ownership interests prior to distribution, there is no transfer of ownership interests which might trigger a change in ownership of real property owned by the legal entities. Thus, the ownership interests distributed are not cumulated or counted for purposes of subdivision (d) of Revenue and Taxation Code section 64, and are not considered for purposes of determining whether a single person or entity has acquired "control" within the meaning of subdivision (c) of section 64. C 10/22/97. (M99-1).

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220.0790 **Trusts.** The transfer of real property into an irrevocable trust places legal title to the property in the trustee and equitable title thereto in the named beneficiary. Therefore, if the trust had been created prior to the adoption of article XIII A of the California Constitution, the beneficiary became the owner of the trust property at that time, and the subsequent distribution of the property by the trust to the beneficiary would be excluded from change in ownership. C 2/29/88. (M99–2).

220.0791 **Trusts.** The transfer by each of two persons as to an undivided one-half interest in real property to an irrevocable trust, reserving to themselves the entire net income of the trust, is excluded from change in ownership since the trustors are the present income beneficiaries of the trust. On the termination of the trust, a transfer of the property to the trustors could be excluded from change in ownership (Revenue and Taxation Code section 62(d)), as could a transfer of the property to a parent or child of one or both of the trustors (Revenue and Taxation Code section 63.1). C 9/20/88. (M99–2).

220.0792 **Trusts.** The sale of a residence held in an inter vivos, irrevocable “qualified personal residence trust” by the trustee back to the trustor prior to the termination of the trust is excluded from change in ownership. Since the trustee is transferring mere legal title, there is no change in ownership under Property Tax Rule 462.240(a). Further, since the trustor currently has beneficial ownership, the merger of legal and beneficial title in the trustor is excluded from change in ownership under Revenue and Taxation Code section 62(d). C 10/14/99. (2001–1).

220.0793 **Trusts.** A transfer of the present beneficial interest in a trust owning an interest in a partnership that owns real property is a transfer of the partnership interest for change in ownership purposes that can result in a change in ownership of the partnership real property. C 8/10/2000. (2003–1).

220.0810 **Trusts—Charitable Remainder.** Such trusts, whether called charitable remainder annuity trusts, charitable remainder unitrusts, or charitable remainder net income trusts, involve a transfer of property to an irrevocable trust, with the income therefrom reserved to the trustor or other non-charitable beneficiary and with a charitable remainder in the property at the termination of the income interest. Accumulated but undistributed trust income is added to the trust principal and distributed to the charitable remainderman.

The transfer to the trust would not be a change in ownership if the trustor or the trustor’s spouse is the present income beneficiary of the trust. The charitable remainderman interest, even in the undistributed income, is not a present one but is deferred until the trust terminates. C 8/30/85.

220.0814 **Trusts—Land Trusts.** The characteristics of a land trust generally include the following: (1) the holding of both legal and equitable title of the trust property by the trustee; (2) management and control reserved to the beneficiary (or any person designated in writing by the beneficiary); (3) the beneficiary vested with the right to direct the trustee to convey title; and (4) the interest of the

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beneficiary as personal property. As a result, business trusts and Illinois land trusts have some characteristics in common, such as the holding of legal and equitable title of the trust property by the trustee and the characterization of ownership interests in the entity as personal property. However, there is one significant difference between the entities: broad management powers are given to the trustee of a business trust to manage the entity, while management and control of an Illinois land trust are reserved to the beneficiary or beneficiaries of the trust. Thus, who controls the management of the entity, the trustee or the beneficiary, is the most significant characteristic in determining whether a business trust or an Illinois land trust has been created.

The sole owner of real property transferred the property into a land trust, an irrevocable trust; the transferor is the beneficiary of the trust; and legal title to the property in trust is held by a third party as trustee. The provisions of the trust provide that the trustee shall not act unless instructed to do so by the trust beneficiary, and that the trustee shall not manage or operate the trust properties. Thus, the subject land trust was not operated as a business entity, but rather for the holding and conservation of property. As a result, since the trustors are the present beneficiaries of the trust, Revenue and Taxation Code section 62(d) would apply to exclude the transfer of real property into the trust from a change in ownership. C 6/26/2000. (2002–1).

220.0815 Trusts—Massachusetts or Business Trust. A Massachusetts or business trust rather than a partnership is created where the contract vests management control in the trustees rather than the certificate unit holders. Nevertheless, such a trust should be treated as a separate legal entity for property tax purposes where the contract provides that (1) the organization is a separate legal entity having its own common law identity; (2) the trustees shall hold both equitable and legal title to the property of the organization; and (3) the ownership of certificate units, which are in the nature of shares of stock, shall not entitle the holder to any legal or equitable title or any undivided interest in the property of the organization. C 4/26/94.

220.0818 Trusts—Powers of Appointment. California Civil Code section 600 and following sections provide for the creation of a power of appointment whereby a person may appoint or transfer to others an interest in property held by an inter vivos or testamentary trust.

If a power of appointment allows for the transfer of property from the trust to the holder of the power, his estate, his creditors, the creditors of his estate, or any of them, it is a general power of appointment. A grant of a general power of appointment is equivalent to a grant of absolute ownership. Thus, the exercise of a general power of appointment in favor of the decedent's spouse and children is legally equivalent to the transfer by the decedent of the property held by the trust to the decedent's spouse and children.

To the extent that a trust includes interests in real property, a transfer of real property through exercise of a general power of appointment may qualify for the interspousal exclusion if to a spouse, or for the parent-child exclusion if to a

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child, provided timely claims for exclusion are filed and all other requirements of Revenue and Taxation Code sections 63 or 63.1, as appropriate, are satisfied. C 12/26/90. (M99-1).

220.0819 Trusts—Resulting Trust. An individual purchased parcels of land and recorded title in his nominee's name. Purchaser delivered the purchase money with his checks, paid all taxes, recorded a continuing farming agreement, and had a verbal agreement and a power of attorney from the nominee. The nominee executed quitclaim deeds conveying title to the purchaser shortly after the purchase, but they were not recorded until years later in conjunction with the purchaser's transfer of the parcels to his trust.

The nominee's transfer of the parcels by quitclaim deeds to the purchaser did not result in a change in ownership either when the deeds were delivered or when they were recorded, since the nominee was not the beneficial owner of the parcels. While Evidence Code section 662 provides that the owner of legal title is also the beneficial owner of the property, this presumption may be rebutted by clear and convincing proof that another person has beneficial ownership. In addition to the possibility of a nominee relationship, a resulting trust is established when the evidence shows that a transfer of property is made to one person, and the purchase price is paid by another. C 8/25/92; C 8/1/94. (M99-1).

220.0820 Trusts—Security Interest Transfers. The use of a trust arrangement to protect the interest of a "beneficiary" who obtains refinancing for property owned and occupied by the nominal trustor does not result in a change of ownership if the tests contained in Property Tax rule 462(k) are satisfied, thereby overcoming the Civil Code section 1105 rebuttable presumption that a conveyance (including one made to a trust) is what it is purported to be; i.e., a transfer of property. C 4/30/91.

220.0821 Trusts—Sprinkle/Spray Provisions. A transfer of real property to an irrevocable trust results in a change in ownership when, under the terms of the trust, the trustee may exercise his or her discretion by distributing all of the trust income or principal to one or more unidentified beneficiaries for whom no change in ownership exclusion is available. Pursuant to Property Tax Rule 462.160(b)(1)(A), a transfer of real property to an irrevocable trust with a "sprinkle/spray" provision results in a change in ownership unless all of the persons included as beneficiaries under that provision qualify for an exclusion from change in ownership. C 7/22/2002. (2004-1).

220.0822 Trusts—Sprinkle/Spray Provisions. If a trust provides that the trustee may exercise a sprinkle power to a group of beneficiaries that includes some persons to whom exclusions are available and some to whom no exclusions are available, then it is treated as though no exclusions are available. If the trust does not specify a fixed interest for each beneficiary, all beneficiaries are presumed to have equal interests in the property. C 1/4/2006. (2006-2).

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220.0823 Trusts—Successor Trustee. When a trustor-trustee becomes incapacitated and another person succeeds as successor trustee, no change in ownership occurs as long as the trustor remains the present beneficiary of the trust. For change in ownership purposes, it is necessary to look through the trust to determine the parties between whom a transfer is taking place. If there is no transfer of the beneficial interest, then no change in ownership occurs. C 11/15/2006. (2008-1).

220.0830 **Trusts—Resolution Trust Corp. (RTC) and Federal Savings/Loan Insurance Corp. (FSLIC).** When the RTC takes control of the assets of a failed savings institution or when the FSLIC takes control of the assets of a failed bank, each does so as a conservator or receiver and must manage the property for the benefit of the failed entity, its shareholders and its creditors. Since there is not a transfer of a beneficial interest in real property to the conservator/receiver, there is no change in ownership.

Property held by either of these federal entities is pursuant to express federal law subject to property tax and transfers of real property by them to individuals

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or other entities constitute changes in ownership unless a specific Revenue and Taxation Code exclusion is applicable. C 2/1/91.

220.0855 Undivided Interest. Upon transfer of an undivided interest in property, only the interest or portion transferred will be reappraised. However, a transfer of an undivided interest with a market value of less than 5 percent of the value of the total property will not be reappraised if the market value of the interest transferred is less than \$10,000. A transfer of an undivided interest of 1 percent is subject to reappraisal if the value of the property transferred equals or exceeds \$10,000. Transfers during a single assessment year must be cumulated to determine if the transfers exceed the allowable minimums. LTA 12/9/80 (No. 80/180).

220.0860 Unincorporated Association. As unincorporated associations are entitled to general recognition as separate legal entities (*White v. Cox*, 17 Cal.App.3d 824), and as Revenue and Taxation Code section 61(i) provides that the transfer of any interest in real property between a legal entity and an individual is a change in ownership, the transfer of property by an unincorporated association to various individuals, some members and some not, gives rise to reappraisal of the entire property since the members do not retain the same proportional interests in the property after the transfer as required by Revenue and Taxation Code section 62(a). C 5/13/81.

220.0865 U.S. Forest Service Permittees. Changes in ownership may occur when an association of U.S. Forest Service permittees combines to purchase land and then exchanges the newly purchased land for the sites the permittees have been using and have been assessed possessory interests for in prior years. In effect, the permittees are purchasing reversionary interests and become absolute owners of the sites.

1. The creation, renewal, sublease or assignment of a taxable possessory interest in tax exempt real property, whether the reversionary interest or the leasehold interest, constitutes a change in ownership of the entire property. Thus, reappraisal of the entire sites is proper since reversionary interests/taxable possessory interests have been transferred.

2. With regard to improvements on the sites, the specific circumstances will govern:
 - (a) No change in ownership occurs where permittees have held title to the improvements through the years.
 - (b) Where the Forest Service has held title to the improvements through the years, the improvements should be treated like the sites and reappraised entirely.

Relevant considerations in this regard are who built the improvements; whether the lease, contract, or other written instrument provides who has title to the improvements; and whether permittees are able to remove the improvements at the end of their terms or whether they must leave them on their sites. Where a permittee built the improvement and is required to remove it at the end of the term, title can be said to be held by the permittee. On the other hand, where title

CHANGE IN OWNERSHIP (Contd.)

to the improvement vests in the Forest Service (regardless of who built it) or a permittee cannot remove the improvement at the end of the term, title is held by the Forest Service. C 3/6/80.

220.0870 Void Contract. A contract of sale which is void from the inception under Civil Code section 1041 does not result in a change in ownership and may not be the basis for reappraisal. C 7/16/80.

220.0871 Void Contract. A void contract, agreement etc. is without legal significance from the outset, whereas, a voidable contract, agreement etc. is effective until rescinded or voided. A transfer of property which is voidable results in a change of ownership, a reappraisal and taxes based on the new value. If the transfer is rescinded or voided, no refund of taxes would be due. The opposite is true when a transfer is void from the outset. In that case, the base year value at the time of the execution of the agreement should be reinstated, factored to its current assessable value and enrolled. The taxes paid on the value of the property based on the void transfer should be refunded. C 9/22/89.

220.0875 Water Rights. A limited partnership owns water rights to 6,490 acre feet of groundwater. The partnership will transfer to its various limited partners all of its water rights as a part of the dissolution of the partnership. If the incidence of ownership of the water rights owned by the individual former partners does not remain the same before and after the transfers, the transfer would constitute a change in ownership of the property transferred, resulting in a 100 percent reappraisal of the water rights pursuant to Revenue and Taxation Code section 61(j). C 3/30/98. (M99–2).

220.0878 Wetlands Credits. Wetlands credits relate to zoning and development restrictions and the purchase of such credits does not transfer a present interest in real property and should not be treated as an appraisal event. Wetlands credits are distinguishable from transferable development rights (TDRs) in that wetlands credits do not transfer any part of the bundle of rights arising from the ownership of a wetlands mitigation bank site to a permittee. Wetlands credits are further distinguishable from TDRs by the fact that TDRs are development rights that have gone unused by the seller. In other words, TDRs come into existence regarding a property and have value because the property was not fully developed, such that the TDRs represent an unused “right” in the property. The seller of TDRs had development rights to his property but has decided to not fully exercise those rights. With the sale of the TDRs, the seller loses his right in perpetuity to further develop his property.

Wetlands credits, on the other hand, have no such characteristics. A purchaser of wetlands credits must purchase these credits as a prerequisite for development, but the seller (“bank”) continues to own the wetlands. The seller of wetlands credits, a wetlands mitigation bank, does not lose an unused “right” as the result of selling wetlands credits. As such, the transfer of wetlands credits should not be treated as an appraisable event since the wetlands remain assessable to the seller (“bank”). C 5/3/2001. (2002–1).

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220.0880 **Wills.** A parent's transfer of property by will to his/her children on a share and share alike basis, without further limitations, makes the children "owners in common" of all of the estate property. See Probate Code section 6143.

Unless the will allows for the distribution of estate assets on a pro rata or non-pro rata basis, a distribution of a single asset to one child will be considered a transfer by the siblings of their interests in the asset and a transfer by the deceased parent of the "owner in common" interest provided for in the will. C 8/6/90; C 5/26/94.

220.0881 **Wills.** A parent's transfer of property by will to his/her children in equal shares makes the children "owners in common" of the estate property. A child's claim that the parent had taken title to his/her undivided interest in a residence at the time of purchase merely as a security device, in order to secure the repayment of funds advanced by the parent in the purchase of such residence, must be substantiated by clear and convincing evidence. Without such evidence, the property would pass to the children for which the parent-child exclusion is available. Any subsequent transfers between the siblings would be considered changes in ownership for which no exclusions are available. C 6/5/89. (M99-2).

220.0885 **Wills—Share & Share Alike.** Whether a change in ownership occurs when a child receives a 100 percent interest in real property from a parent's estate when the estate is distributed according to a will on a share and share alike basis depends on whether the will gives the executor a clear grant of broad discretion to distribute property in kind on a pro rata or non-pro rata basis. LTA 1/23/91 (No. 91/08).

220.0890 **Working Interests and Royalties.** Upon the transfer of the right to extract oil and gas, the entire interest (working interest and royalty) should be revalued at market value as of the date of the transfer. The transfer of a royalty interest alone, however, does not give rise to a reappraisal of the mineral rights. LTA 1/27/81 (No. 81/15).

220.0895 **Working Interests in Term Oil and Gas Leases.** Where mineral reserves measured in terms of years exceed lease periods for which working interests therein have been entered into, both working interests and reversionary interests are created. In such instances, the transfers of working interests are not equivalent to transfers of fee interests. Rather, the terms of the lease periods are determinative (Revenue and Taxation Code section 61(c)(1)), and where lease periods are for terms less than 35 years, transfers thereof do not constitute changes in ownership. Where lease periods are for terms more than 35 years, however, transfers thereof are changes in ownership, with the result that the transfers give rise to reappraisals. C 10/2/80.

220.0900 **Zoning Change.** A change of zoning does not constitute a change in ownership and, therefore, is not a basis for reappraisal under article XIII A of the California Constitution. C 11/20/78.

CHARITABLE PURPOSES WELFARE EXEMPTION

See Welfare Exemption

230.0000 CHURCH EXEMPTION

230.0001 Boats. There is no constitutional or statutory provision that extends the exemption to boats, regardless of their use for religious worship. C 4/12/78.

230.0005 Cafeteria Sales. That portion of a church property used as a cafeteria for churchgoers in attendance may be incidental to and reasonably necessary for church purposes. Charging for food is permissible so long as the property is exclusively used for exempt purposes and any income generated is not the result of intentional profit-making. C 1/25/80.

230.0020 Church Uses. Where the primary use of buildings, land and equipment is for religious worship, the exemption will be available if incidental uses are made of the property by the church on a noninterfering basis. Incidental, noninterfering uses must be supportive of primary religious worship use, usually involve only present or prospective members of the congregation, and include religious instructional sessions, choir practice sessions, church administration, church business meetings, and most activities of auxiliary organizations accountable to the local church authority. C 10/22/81.

230.0021 Church Uses. A church music ministry offering vocal, piano and instrument instruction within the church to enhance and increase involvement in religious services is a church activity and hence, an incidental, noninterfering use supportive of primary religious worship use. C 1/17/85.

230.0022 Church Uses. Personal property/equipment used as part of a building used exclusively for religious worship is eligible for the church exemption. Telephone systems, burglar alarms and kitchen appliances necessary for religious worship should be exempt, whether leased or owned. The church exemption is solely a use exemption, the object of which is to assure that churches are relieved of property taxes on property used exclusively for religious worship. C 9/11/89.

230.0025 Late Filing Forgiveness. The provisions of Revenue and Taxation Code section 271 do not apply to property that is leased subsequent to the lien date. While the California Constitution exempts properties used “exclusively for religious worship”, section 271 waives timely exemption filing requirements only for properties owned by claimants. Leased properties are not properties owned or properties acquired within the meaning of the section. C 3/3/83; C 10/10/91. (Am. M99–1).

230.0026 Leased Land. Property that is leased by a church or religious organization from a for-profit entity may qualify for the church exemption under Revenue and Taxation Code section 206. However, the church exemption requires that the property be used primarily for religious worship and that all other uses of the property are incidental and necessary uses supportive of the primary religious worship use.

A non-profit corporation leased land from a for-profit entity to build a Roman Catholic school of less than collegiate grade. Although the school intends to hold

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Roman Catholic mass for the students in the gymnasium, performing arts center and outside plaza, these buildings will not be used primarily for religious worship. Instead, the primary use of these buildings is for various sports and student activities unrelated to religious worship. Therefore, the leased land on which the buildings are located do not qualify for the church exemption. C 7/30/2004. (2005-2).

230.0030 Non-Church Uses. The exemption is not available in instances in which other organizations are making uses of church buildings, land and equipment, except that the exemption can be allowed if such property is used by nonprofit, charitable, local civic groups for random meetings on a not-to-interfere basis. C 10/22/81.

230.0031 Non-Church Uses. The use of church-owned property for a “Center For Christian Counseling,” although sanctioned by the church, does not qualify for exemption where decisions or actions relating to client care are not subject to review by the church, the center’s daily operations are beyond control of the church, and the counselors receive remuneration comparable to that received by private practitioners. C 4/28/82. (M99-1).

230.0032 Non-Church Uses. The free use of church property as a polling place for any election conducted by the registrar of voters does not interfere with the granting of the church exemption. C 10/6/80. (M99-1).

230.0040 Special Taxes. The church exemption applies to ad valorem property taxes and does not prevent collection by a local governmental agency of a special tax imposed for fire protection or prevention services. C 10/17/80. (M99-1).

240.0000 CHURCH PARKING AREA EXEMPTION

240.0005 Fundraising Activities. A church’s use of its parking area for the commercial purpose of selling barbecue dinners disqualifies the property from the exemption. The church’s barbecue dinner sales indicated a commercial or business purpose because (1) the sales were scheduled on a regular basis for a period of several months, (2) a fixed price was charged per dinner, (3) delivery service was available, and (4) sales were advertised in the local newspaper and on signs near the freeway. C 1/27/98. (M99-1).

240.0010 Non-Church Uses. “Commercial purposes” as used in Revenue and Taxation Code Section 206.1 does not include the parking of vehicles or bicycles on church parking lots regardless of the manner in which parking is administered, so long as the revenue derived therefrom does not exceed the cost of operating and maintaining the property for parking purposes. An arrangement whereby a doctor/pharmacy business adjacent to a church parking lot maintains the lot in return for its weekday use of the lot does not interfere with the exempt nature of the property. C 2/28/80. (Am. M99-1).

CHURCH PARKING AREA EXEMPTION (Contd.)

240.0011 Non-Church Uses. A church parking lot used for church parking and by other individuals and businesses on weekdays for parking that is not use for “commercial purposes,” as defined in Revenue and Taxation Code Section 206.1, remains eligible for the exemption. C 5/28/87. (Am. M99–1).

250.0000 COLLEGE EXEMPTION

250.0001 Housing. Property used exclusively for the purposes of education as contemplated by section 3(e) of article XIII of the California Constitution and Revenue and Taxation Code Section 203 includes housing for students, faculty, administrators, and guests. Where a college acquires an existing apartment complex and students move in as existing tenants leave, only that portion of the complex occupied by students on the lien date will be eligible for the exemption. LTA 1/8/82 (No. 82/6).

250.0010 Incorporated Out of State. Property used exclusively for educational purposes by a non-profit institution of higher education is eligible for exemption even if the institution is incorporated in a state other than California, provided that the other state’s incorporation requirements for non-profit educational institutions of higher education are substantially similar to those of California’s. C 8/26/83. (M99–2).

250.0012 Medical School Facilities. A university medical school leases medical clinic facilities to nonprofit corporations comprised of doctors/faculty groups on the university medical school faculty, under the control of department chairpersons. The property is used to provide medical services to patients as well as required clinical training for medical students, interns and residents. All the patients are patients of the faculty practice groups, rather than patients of individual doctors, and the income generated from the clinical practice is used to support the medical school. Thus, the property used by the faculty practice groups to conduct clinical practices is exempt as property used exclusively for educational purposes by a nonprofit institution of higher education. C 12/10/99. (2001–1).

250.0015 Non-College Uses. A college otherwise qualified for exemption will not receive exemption on that portion of its campus rented to other, non-college organizations or persons for meetings, lectures, conferences, workshops or retreats during the summer. Likewise, portions of the campus used in conjunction with a catering business will not be exempt, even though the employed students receive instruction in the operating of a business. The commercial and fund-raising uses of the property are grounds for denial of exemption. C 6/16/87; C 7/27/90. (Am. M99–1).

250.0018 Ownership. Property used exclusively for educational purposes by a nonprofit institution of higher education includes property owned and used by an agent of that college if the agent is: (1) nonprofit, (2) controlled by college(s) qualifying under section 203 of the Revenue and Taxation Code, and (3) operating the property for the exclusive benefit of the qualifying college(s),

COLLEGE EXEMPTION (Contd.)

pursuant to the mandate of the organizational documents of the qualifying college(s) and the nonprofit institution. C 7/27/2000. (2002–1).

250.0019 Parking Lot. A parking lot leased by a college for student parking that is also used on a regular basis by a for-profit business entity for nonqualifying commercial parking purposes is not eligible for exemption as property used exclusively for educational purposes by a nonprofit institution of higher learning. C 12/11/2002. (2004–1).

250.0020 Student Bookstore. Where the college and bookstore are separate corporations and both will receive the exemption, each corporation's property (excluding inventory) should appear separately on the roll with its own assessed value and exemption, as only the bookstore's *personal property* is subject to subvention. This appears most easily accomplished by having the bookstore file its own personal property statement, by entering the values on the roll, and then allowing the exemption. LTA 3/11/80 (No. 80/43).

250.0021 Student Bookstore. The college exemption is available to college-owned realty, improvements, fixtures and equipment used in a college bookstore, even though the store is operated by a for-profit entity. Similar property used in such a bookstore but not owned by the college is subject to tax, as is college-owned book store property used to generate unrelated business taxable income as defined in the Internal Revenue Code. C 5/16/90.

250.0022 Student Bookstore. The leasehold interests held by for-profit organizations operating bookstores on community college, private college, and state university campuses are considered property used exclusively for public schools, community colleges, private colleges, and state universities. Property "used exclusively" for private college or public school purposes is exempt from property tax under Revenue and Taxation Code section 202, regardless of the for-profit status of the user. C 1/25/2005. (2005–2).

260.0000 CONFIDENTIAL RECORDS OF TAXPAYER

260.0003 Computer Equipment Depreciation Factors. Pursuant to Government Code Section 15619, the Board may solicit and process technical, proprietary information for the production of industry wide reports without public disclosure within the restrictions of the statute. C 6/2/95.

260.0005 County Grand Jury. The requirement in Revenue and Taxation Code Section 408 that the assessor disclose information "to law enforcement agencies, the County Grand Jury, the Board of Supervisors or their duly authorized agents, employees or representatives when conducting an investigation of the Assessor's Office pursuant to Government Code Section 25303" is three requirements. The reference to Section 25303 only modifies actions taken by the board of supervisors, as this section sets forth the board of supervisors' duty to supervise the official conduct of county officers, particularly those charged with assessing, collecting, safekeeping, management, or disbursement of the public revenues. C 7/2/75; C 8/26/96.

CONFIDENTIAL RECORDS OF TAXPAYER (Contd.)

260.0008 **Detail Statements.** The Board's document titled "Allocations of Assessed Value of State Assessed Property," prepared in accordance with Revenue and Taxation Code Section 746, and commonly referred to as a "Detail Statement," contains information derived from property statements filed by state assesseees pursuant to Revenue and Taxation Code Section 826 which must be held secret by the Board. Thus, the Detail Statement is not open to inspection by the public or by government officials other than the county assessor and other government officials as specifically provided in Revenue and Taxation Code Section 833. City officials are not among the officials specified in Section 833. C 8/20/96.

260.0020 **District Attorney.** The district attorneys in the 58 counties, and their deputies and other employees, are "law enforcement agencies" within the meaning of Revenue and Taxation Code Section 408(b). Accordingly, an assessor is required to disclose information, furnish abstracts and permit access to all records in the assessor's office to the district attorney or his or her authorized deputies and employees. C 9/12/96.

260.0033 **Homeowners' Exemption Claim Form.** The county assessor may release a copy of the homeowners' exemption claim form to the Internal Revenue Service where the IRS has served on the assessor a summons under 26 USC 7602 requesting a copy of the form for the purpose of determining the accuracy of a tax return filed with the IRS. C 10/24/96.

260.0040 **Information Fees.** The general rule is that to the extent the assessor discloses information to the public, fees for that disclosure may, within specified limits, be established and imposed by the county. However, fees for the preparation and distribution of certain information, such as a list of property transfers which have occurred within the preceding two years and property characteristics information, may be established and charged by the assessor rather than by the "county".

Revenue and Taxation Code Section 408.1 does not apply to counties of less than 50,000 population. Revenue and Taxation Code Section 408.3, which refers to property characteristics information, applies to counties with a population of more than 715,000 and is optional for counties of 715,000 or less. If an assessor of a county with the lesser population decides to provide the information, he or she and not the county sets the fee to be charged for the information. C 6/8/88.

260.0050 **Law Enforcement Agency.** A code enforcement division of a county's building department is not a "law enforcement agency" within the meaning of Revenue and Taxation Code section 408(b), to which assessors' records must be disclosed. California courts have held that "law enforcement" is to be narrowly construed to mean having traditional law enforcement powers to enforce the

CONFIDENTIAL RECORDS OF TAXPAYER (Contd.)

penal statutes of this state. Almost any agency is empowered to administer and enforce some law, regulation, or ordinance. However, such law enforcement power does not make an agency a "law enforcement agency" for purposes of section 408(b). Traditional law enforcement agencies would be, for example, local police departments, California Highway Patrol, alcohol and drug enforcement agencies, local sheriff departments, federal marshals, Federal Bureau of Investigation, Federal Drug and Alcohol Enforcement Agencies, the California Attorney General's investigative staff, and any other similar local, state, or federal agency enforcing the penal laws of this state or of the federal government. C 10/5/2000. (2003-1).

260.0055 Legal Entity Ownership Program. Franchise tax returns filed with the Franchise Tax Board, and a primary source of information for the program, and change in ownership statements filed in conjunction therewith are not public documents and are not open to public inspection. C 3/8/84.

260.0065 List of Transfers. As a general rule, information and records in an assessor's office which are not required by law to be kept or prepared are not public documents. However, if an assessor chooses, pursuant to Revenue and Taxation Code Section 408.1(c)(7), to include information not mandated by law in his or her list of transfers of property interests, that additional information becomes public information open to inspection. C 3/6/84.

260.0066 List of Transfers. In compiling the list of transfers open to public inspection, the assessor is required by subdivision (f) of Revenue and Taxation Code section 408.1 to hold secret the information contained on the preliminary change in ownership statement and on the change in ownership statement, except to the extent the information is otherwise disclosed, known, or published and available from other sources. The information on the transfer record in the county recorder's office is open to public inspection. C 12/13/96. (M99-1).

260.0075 Planning Commission. County planning commissions are agencies created by the Legislature pursuant to Government Code Section 65101 and are authorized by Government Code Section 65106 to request information from all public officials as may be required for their work. Such a commission qualifies as a legislative or administrative body of the State authorized under Revenue and Taxation Code Section 408 to examine the records of the assessor.

The assessor shall supply such information as is available to him or her, to the extent such information is pertinent to the duties of the planning commission. C 3/24/88.

260.0080 Planning Directors. Planning directors, when performing duties as building inspectors, are not law enforcement officials and do not have access to an assessor's records, absent any specific statutory authorization therefor. C 10/13/83.

260.0090 Social Security Numbers. The Board may disclose to the IRS the database for the \$1 million parent/child exclusion, which includes taxpayers'

CONFIDENTIAL RECORDS OF TAXPAYER (Contd.)

social security numbers, under the Information Practices Act *only* pursuant to a legally sufficient IRS summons. C 4/11/94.

260.0093 State Assessee Records. When the assessor or auditor of a county obtains state assessee records pursuant to Revenue and Taxation Code section 833(c), he or she is bound by the confidentiality requirements of section 833 in the same manner and to the same extent as the Board. C 5/22/2000. (2001–1).

260.0095 Third Party Property Statements. Information submitted by multiple taxpayers on their property statements may be used by the assessor to derive industry wide averages that may be used to assess or defend the assessment of another taxpayer. Identification of the submitters of the property statements should not be made in public session but can be made *in camera* to either the appeals board or a court. C 1/14/94.

CONFLICT OF INTEREST

See Appraiser Certification

270.0000 CONSTRUCTION EQUIPMENT

270.0001 Rubber-Tired Equipment. For rubber-tired equipment to be nonassessable, the equipment must (a) not be over-sized/weight so as to come under permit provisions of Vehicle Code Section 35780, (b) be registered by the Department of Motor Vehicles under the Vehicle Code and, (c) be licensed by the Department of Motor Vehicles under the Vehicle License Fee Law. C 10/13/78.

280.0000 CONTRACT

See Change in Ownership

280.0001 Lease or Conditional Sales Contract. In determining whether a contract is a lease or a conditional sales contract, the intent of the parties, derived from the substance of the contract, is critical. A contract identifying itself as a lease may, in actuality, be a conditional sales contract and vice versa. With any given contract, some of the terms may be indicative of a lease, while others may point towards a conditional sales contract. Terms to be considered in this regard are the contract term and payments, and any ownership or title terms. Also relevant is how the lessor-seller treats the property for accounting purposes. LTA 9/7/79 (No. 79/155).

285.0000 CORRECTIONS

See Assessment

285.0005 Assessment. A correction made on or before July 1 of the fourth year following an assessment is made “within four years after the making of the assessment” and hence, is timely. C 3/30/83.

285.0006 Assessment. In order to correct an assessment roll entry based upon Revenue and Taxation Code section 4831.5, it is necessary that the defective assessment was the result of a defect or error in the information or records submitted to the assessor. The defect or error may be ascertained only from the

CORRECTIONS (Contd.)

books of account or other records that existed at the time of submission. Later derived data may not be used to create an inference of error at the time the value was placed on the roll. C 1/28/87.

285.0010 Assessment Error. When there is an error in the amount placed on the assessment roll and that amount does not reflect the value intended by the assessor at the time that the entry was made, Revenue and Taxation Code section 4831 permits a correction of that error within four years after the date the assessment was made. Section 4831 does not permit correction of errors involving the exercise of valuation judgment, however. C 5/22/87.

285.0011 Assessment Error. When a property located in two counties is assessed for the portion in one of the counties at the value of the entire property, a correctable error has occurred. The number of past years for which correction is available turns on the assessor's determination of whether the error was one of appraisal judgment, clerical error, or neither.

If the error was one involving appraisal judgment, the value may be corrected within four years after July 1 of the assessment year for which the base year was first established. If a clerical error, as defined in Revenue and Taxation Code section 51.5(f)(2), has occurred, or if the error did not involve a value judgment, it may be corrected in any year.

Regardless of the assessor's ability to correct assessment errors, the taxpayer retains the cancellation rights provided by Revenue and Taxation Code section 4986 and the refund rights provided by Revenue and Taxation Code section 5096. C 3/11/88.

285.0015 Base Year Values. Base year values are generally control figures which may be adjusted to reflect inflation or to correct an error or omission. A change in a base year value does not necessarily result in a change in a current assessed value, e.g., a newly discovered change in ownership that occurred in a prior year followed by a period of deflation where the assessment based upon the decline in value is lower than the new base year value. Revenue and Taxation Code section 51.5 is the authority for base year value corrections and contains its own time limits.

Escape assessments may or may not result from a base year value correction. Such escape assessments are subject to the time limits found in Revenue and Taxation Code sections 531.2 and 532, not those contained in section 51.5. C 5/13/88.

285.0016 Base Year Values. Where an assessor recognizes an error and reduces a base year value pursuant to Revenue and Taxation Code section 51.5, the taxpayer is entitled to the cancellation or refund of taxes for prior years to the extent they are open under the applicable statutes of limitation. Where, however, a taxpayer utilizes the assessment appeals process available under Revenue and Taxation Code section 80 et seq., a reduction in value applies to the year for which the appeal is filed and to future assessment years only. Section 51.5 does

CORRECTIONS (Contd.)

not provide an alternate authority for filing an assessment appeal or for the reduction of values via the assessment appeals process. C 12/26/91.

285.0017 Base Year Values. An assessor may correct a base year value and adjust assessments retroactively using the corrected base year value when he finds that a former owner committed fraud which resulted in the establishment of an erroneous base year value. The tax collector may then cancel levied, but unpaid taxes based on the assessor's corrections. C 1/10/97. (M99–1).

285.0018 Base Year Values. For purposes of correction of a base year value pursuant to Revenue and Taxation Code section 51.5, an error involving "the exercise of assessor's judgment as to value" includes a value judgment error resulting from erroneous information provided by the taxpayer. Regardless of whether a property has been previously equalized, such an error must be corrected within four years, unless the erroneous information constituted fraud, concealment, misrepresentation, or failure to comply with disclosure statutes. The discovery during a mandatory audit that a base year value is incorrect due to erroneous information supplied by the taxpayer does not change the process for correcting base year values. C 4/12/99. (2000–1).

285.0019 Base Year Values. Revenue and Taxation Code section 51.5(a) is applicable in the case of a non-existent swimming pool whose "value" was mistakenly added to the property owner's 1979 property assessment. Refunds are available to the extent permitted by Revenue and Taxation Code section 5097. C 10/28/99. (2001–1).

285.0020 Clerical Errors. The definition of "clerical errors" contained in Revenue and Taxation Code section 51.5 is a narrow one in that it applies only when it can be shown from records in the assessor's office or from other evidence that there was an error in addition, multiplication, or a transposition of numbers which resulted in the entry of a figure not intended. The definition would not include the sending of reporting documents to a lessor when they should have been sent to the lessee, even though a clerk may have caused the misdirection.

In valuing a mining property, the value placed on reserves may be corrected as an error involving an assessor's value judgment within four years after July 1 of the assessment year for which the base year value was first established. If no base year was ever established, it may be determined in any year in which the error is discovered. After the base year value is established, escape assessments are proper for any year open under the applicable statute of limitation. C 2/2/88.

285.0025 Decline in Value. A taxpayer is not required to file an application for reduction in assessment to obtain a reduced assessment due to a decline in value of his or her property if the assessor determines that a reduction in value is warranted. The 1995 amendment to Revenue and Taxation Code section 4831, which added subdivision (b), allows the assessor, for up to one year after making an assessment, to correct the assessment if the error or omission involved the exercise of a value judgment that arose solely from a failure to reflect a decline in value. C 6/21/96. (M99–1).

CORRECTIONS (Contd.)

285.0050 **Judgment.** Neither Revenue and Taxation Code section 4831, because of its specific prohibition, nor section 4986, in view of *Rittersbacher v. Board of Supervisors*, 220 Cal. 535, permits correction of errors involving the exercise of valuation judgment. Rather, the timely filing of an application for reduction of the assessment is a prerequisite to any relief. C 11/26/82.

285.0051 **Judgment.** The correction, cancellation, and refund sections of the Revenue and Taxation Code, when read together, lead to the conclusion that “erroneously or illegally” does not include errors in valuation judgment. The appropriate and necessary administrative remedy for disputes involving valuation judgments is an assessment appeal before a board of equalization or assessment appeals board. The appellate court cases fully support this interpretation of the term and set forth the definitive circumstances under which an assessment is considered to have been made “erroneously or illegally.” C 10/22/97. (M99–1).

285.0060 **Nonjudgmental Error.** The discovery more than four years after the establishment of the base year value that a parcel is unbuildable does not render that base year value incorrect due to a clerical or nonjudgmental error. Thus, if the four-year statute of limitations has run for correcting errors due to value judgment under Revenue and Taxation Code section 51.5(b), the base year value cannot be changed. C 11/10/99. (2001–1).

285.0090 **Value Changes.** Correction to base year values are required by Revenue and Taxation Code section 51.5. Roll corrections not involving the exercise of value judgment are authorized by Revenue and Taxation Code section 4831(a), while those involving value judgment arising solely from a failure to reflect a decline in taxable value under Revenue and Taxation Code section 51(a) are authorized by section 4831(b). C 9/26/96.

290.0000 COUNTY ASSESSOR

See Tax-Deeded Property

290.0001 **Article XIII A Reappraisal.** A 1977 assessment appeals board decision as to value as of the March 1, 1977, lien date is not controlling or binding upon the assessor as to his 1978 article XIII A of the California Constitution determination of value necessitated by a change in ownership which occurred prior to the March 1, 1977 lien date. C 11/8/78.

290.0005 **Board’s Assessment Standard Division’s Internal Guidelines.** Assessment Standards Division’s (ASD’s) internal guidelines, formerly known as Policies and Procedures, were developed by ASD to provide staff with guidelines to follow when sampling counties’ local assessment rolls. Distribution of ASD internal guidelines to county assessors is for the purpose of notifying assessors of the guidelines ASD staff follows when sampling county local assessment rolls. County assessors are not required to follow the ASD internal guidelines, and the guidelines do not have the authority of a property tax rule, assessors’ handbook, or letter to assessor. Also, the guidelines are not to be cited as an authority in assessment appeals hearings. LTA 5/8/96 (No. 96/30).

COUNTY ASSESSOR (Contd.)

290.0007 Duty to Assess to Claimed Owner. Notwithstanding that Revenue and Taxation Code section 405 requires that property be assessed to the persons owning, claiming, possessing, or controlling it on the lien date, the assessor's refusal to separately parcelize and assess a portion of a larger parcel claimed to have been sold does not invalidate the assessment of the property as a single parcel. Revenue and Taxation Code section 613 provides that a mistake in the name of the owner or supposed owner does not invalidate an assessment made against real property. Further, the assessor's refusal may be appropriate when the purported sale would be contrary to provisions of the Williamson Act, would appear to violate the Subdivision Map Act, and is the subject of litigation. C 5/7/90. (M98-1)

290.0010 Employee Purchases of Real Property. A real property tax appraiser employed by a county assessor may lawfully purchase property within the county at a tax-deeded land sale if he has not participated in or influenced the appraisal of the tax-deeded parcel, does not use county time or county facilities not available to the public generally and is not prohibited from making such purchase by a valid local regulation.

Government Code Section 1126(b) authorizes a county assessor to prohibit his employees from purchasing property within the county at a tax-deeded land sale subject to the approval of and in accordance with any rules adopted by the board of supervisors of the county. OAG 12/9/80 (No. 80-317, Vol. 63, p. 868).

290.0020 Hiring of Specialist. The assessor may contract with an expert appraiser to assist in the valuation of a property for which special expertise is required. Government Code Section 31000 permits the county board of supervisors to contract for special services on behalf of any county officer. C 3/10/83.

290.0021 Hiring of Specialist. While an assessor may arrange for an expert appraiser to assist in the valuation of a property for which special expertise is required, he cannot delegate to the appraiser his assessment duty under Revenue and Taxation Code Section 405. It is the assessor's act which places a value on the roll, and the assessor is bound to follow applicable property tax rules when making assessments. C 8/18/83.

290.0031 Inspection of Records by County Building Inspector. The assessor may not permit a county planning director in his capacity as the county building inspector to inspect his or her confidential records for the purpose of enforcing the county building code. Neither the director nor the inspector is a law enforcement agency. C 10/13/83.

290.0032 Inspection of Records by County Building Inspector. An Inspection Warrant issued pursuant to Code of Civil Procedure Section 1822.50 et seq. does not authorize a county building inspector to inspect an assessor's confidential records, and to the extent it purports to do so it is illegal. C 10/25/82.

290.0033 Inspection of Records by County Planning Director. The assessor may not permit a county planning director to inspect his or her confidential

COUNTY ASSESSOR (Contd.)

records. Disclosure of confidential records to anyone, including governmental officials, not referred to in Revenue and Taxation Code Section 408(c) is prohibited by Section 408(a), and county planning directors are not referred to in Section 408(c). C 11/9/84.

290.0034 **Inspection of Records by Internal Revenue Service.** The assessor is required, pursuant to an administrative summons issued by the Internal Revenue Service under Title 26 of the United States Code, Section 7602, to produce information contained in property tax records made confidential under Revenue and Taxation Code Sections 408, 451, or 481 where the federal interest in disclosure outweighs the state interest in confidentiality, but is prohibited from producing such information where the state interest prevails. Such information must be produced in any case in compliance with a specific court order. OAG 7/30/85 (No. 84-1104, Vol. 68, p. 209).

290.0035 **Inspection of Records by Law Enforcement Agencies.** Pursuant to Revenue and Taxation Code Section 408(c), an assessor is required to disclose his homeowners' exemption claim files to the California Highway Patrol upon request. C 5/19/80.

290.0037. **Morgan Property Taxpayers' Bill of Rights.** Legislation, effective January 1, 1994, contains numerous provisions relating to assessment appeals, escape assessments, and information to be provided assesseees and it establishes "The Morgan Property Taxpayers' Bill of Rights." The State Board of Equalization is required to designate an independent "Property Taxpayers' Advocate" who is to be responsible for reviewing the adequacy of procedures relating to the distribution of information regarding property tax assessment matters among the Board, assessors, and taxpayers and of procedures relating to the expeditious handling of Board, assessor, and taxpayer inquiries, complaints, and problems. LTA 10/12/93 (No. 93/62); LTA 12/30/93 (No. 93/80).

290.0040 **Property Appraisal Against Will of Owner.** A county assessor may exercise several statutory rights of discovery in order to appraise and assess property when an owner refuses to allow entry upon the property. He may not, however, obtain an administrative inspection warrant or enter private property against the will of the owner. A county assessor would commit criminal trespass if he entered private property against the will of the owner and refused to leave at the owner's request. OAG 11/28/78 (No. CV 78-67, Vol. 61, p. 524).

290.0053 **Records.** Since the purpose and intent of Revenue and Taxation Code Section 408.1 is to provide an additional means by which persons can obtain information as to comparable properties; since the more information one has, the better able he is to determine whether other properties are comparable properties; and since Section 408.1(c)(7) allows an assessor to add additional sales information to the list to carry out such purpose and intent, the assessor could include his records of property characteristics, such as land use, number of structures on a parcel, number of units, square footage(s), and year(s) built on the Section 408.1 list. In that event, being "public" data or information, the records

COUNTY ASSESSOR (Contd.)

could be included in a shared data base where they would be available to all, as they would be on the Section 408.1 list. C 3/6/84.

290.0060 **Special Franchises.** Revenue and Taxation Code Section 23154 does not prohibit the assessor from assessing the special franchises of non-state assesseees. Neither does it require the State Board of Equalization to assess special franchises of those other than public utilities. C 9/25/81.

290.0065 **Subpoena.** Revenue and Taxation Code Sections 441 and 454 authorize an assessor to issue a subpoena to compel the production of records and other information pertaining to taxable property within his county. The production of records, etc., is necessary to the proper appraisal of the property, including all interests therein. LTA 1/30/81 (No. 81/20).

300.0000 COUNTY BOARD OF EQUALIZATION

See Assessment Appeals Board

300.0001 **Comparable Evidence.** *Chanslor-Western Oil and Development Co. v. Cook*, 101 Cal.App.3d 407, precludes disclosure of the scheduled gross rent of an apartment complex used by the Assessor as a comparable to a subject property under equalization. Revenue and Taxation Code Section 408 defines “market data” narrowly, and Section 408(d) states that for purposes of providing such market data, the assessor shall not display any document relating to the business affairs or property of another. C 10/11/84.

300.0010 **Decision.** A majority of a quorum of the board of supervisors, while acting as the county board of equalization, may act upon a matter even if such majority is less than a majority of the full board. OAG 12/4/84 (No. 84-1001, Vol. 67, p. 514).

300.0015 **Morgan Property Taxpayers’ Bill of Rights.** Legislation, effective January 1, 1994, contains numerous provisions relating to assessment appeals, escape assessments and information to be provided assesseees and it establishes “The Morgan Property Taxpayers’ Bill of Rights.” The State Board of Equalization is required to designate an independent “Property Taxpayers’

COUNTY BOARD OF EQUALIZATION (Contd.)

Advocate” who is to be responsible for reviewing the adequacy of procedures relating to the distribution of information regarding property tax assessment matters among the Board, assessors, and taxpayers and of procedures relating to the expeditious handling of Board, assessor, and taxpayer inquiries, complaints and problems. LTA 10/12/93 (No. 93/62); LTA 12/30/93 (No. 93/80).

300.0020 Procedures and Rules. A county board of supervisors, sitting as a board of equalization, is subject to the provisions of the California Administrative Code (Government Code Section 15606).

The one exception is set forth in the third paragraph of section 16 of article XIII of the California Constitution which empowers boards of supervisors to adopt rules of notice and procedures for assessment appeals boards if the supervisors have chosen not to sit as a board of equalization. C 3/17/78.

300.0030 Refunds for 1978–79 Fiscal Year. A property owner who has timely filed an application for reduced assessment for the 1978–79 fiscal year and has been refunded the taxes may not appeal further to recover taxes paid in excess of one percent bonded indebtedness approved by the voters prior to July 1978. Statutes of 1979, Chapter 49, Section 2(b) specifically prohibits refunds in excess of one percent. C 10/22/79.

300.0035 Training Session—Ralph M. Brown Act. The Ralph M. Brown Act does not apply to members of a county board of supervisors, serving as members of a county board of equalization, while they are attending training sessions conducted by the State Board of Equalization that are solely related to their duties as members of the county board of equalization. OAG 5/6/97 (No. 96–1012). (M99–1).

300.0040 Value Recommended by Hearing Officer.

1. The requirement of Revenue and Taxation Code Section 1641 that a county board of equalization establish assessed values at the value recommended by an assessment hearing officer is inconsistent with a county board of equalization’s duty under section 16 of article XIII of the California Constitution to equalize assessed values.

2. County boards of equalization are required to enforce section 1641 until a court determination on the issue as provided in section 3.5 of article III of the California Constitution.

3. An assessment hearing officer is required by Revenue and Taxation Code Section 1611.5 to include written findings of fact when requested by a party as part of his report and recommendation under section 1640. OAG 8/28/81 (No. 81-204, Vol. 64, p. 690).

310.0000 COUNTY BOARD OF SUPERVISORS

*See Article XIII A—Property Tax Limitation
Assessment Appeals Board
County Board of Equalization
Timberland*

COUNTY BOARD OF SUPERVISORS (Contd.)

310.0001 Application-Claim for Refund. A County Board of Supervisors cannot review the action of an Assessment Appeals Board if the assessment appeal application also constitutes a claim for refund. When the taxpayer has the option of making his application a claim for refund and exercises that option, the action of the Assessment Appeals Board also resolves the claim for refund. When the application is not also a claim for refund and when there is a legal issue, such as the proper assessment practice under Revenue and Taxation Code Section 110.1, a County Board of Supervisors has a concurrent power to make refunds even after the valuation question has been resolved by the Assessment Appeals Board. In this situation, the County Board has no review power but must consider the evidence and arguments presented to it in the refund proceeding. C 6/10/80.

310.0020 Low Value Property Exemption. “All real property” as used in Revenue and Taxation Code section 155.20 means all real property satisfying the value limitations in that section is to be exempted. C 6/29/95. (M99–1).

320.0000 COUNTY SERVICE AREA

320.0001 Establishment.

1. A city may petition for the establishment of a county service area which would be completely outside of the city and which would provide no services for residents of the city.

2. The cities in Butte County may petition for the establishment of a county service area or areas to consist of surrounding urban unincorporated territory, including the town of Paradise, with regard to the presently existing enumerated services of the sheriff’s department. However, before such county service area or areas could actually be formed, the board of supervisors would be required to find that the existing law enforcement services in fact included “extended police protection” within the meaning of the County Service Area Law.

Conceivably, extensive patrolling and other law enforcement services in urban areas by the sheriff could be construed as extended county services within the meaning of the enumerated provisions of the County Service Area Law. However, in our view, such a factual finding would be the exception, and not the rule.

3. County service areas may not be established in the unincorporated areas around the cities of Butte County to defray the costs of the county planning department and the county planning commission.

4. A county service area may not be financed from the county general fund if the voters fail to set a maximum tax rate at an election held for such purpose.

5. The duty to set forth the boundaries of a proposed county service area is the obligation of the petitioning cities, and not the duty of the local agency formation commission. OAG 9/4/74 (No. CV 74-46, Vol. 57, p. 423).

D

325.0000 DEADLINES FOR FILING

325.0015 Deadlines Falling on Saturdays, Sundays, and Holidays. Whenever the due date for filing of any document with a state agency or the county assessor falls on a Saturday, Sunday, or holiday, the document may be filed by close of business on the next business day with the same effect as if it had been filed on the specified due date. If the county board of supervisors has, by ordinance, required the assessor's office to be open on Saturday morning, a document required to be filed on that Saturday must be filed by noon on that Saturday. C 3/11/97.

330.0000 DELINQUENT TAX PENALTIES

330.0001 Cancellation. "Under the provisions of Revenue and Taxation Code Section 4985.2, payment of a delinquent penalty on property is not a necessary precondition to the cancellation thereof where the principal amount of the tax, exclusive of such penalty, has been paid within the applicable period specified in subdivision (a) of said section. Relief under subdivision (b) of that section is predicated upon the payment of the principal and penalty." OAG 4/26/79 (No. 79-311, Vol. 62, p. 212).

340.0000 DELINQUENT TAXES

340.0001 Partial Payment. The tax collector may not accept a partial payment of delinquent unsecured property taxes (consisting of payment of the tax and partial penalties) as payment in full in effecting settlement of potential litigation by compromise. OAG 9/18/79 (No. 79-607, Vol. 62, p. 504).

350.0000 DISABLED VETERANS' EXEMPTION

See Mobilehome

350.0001 Assessed Value. On and after January 1, 1981, "assessed value" means "full value" instead of 25 percent of full value. This is the result of section 3.5 of article XIII of the California Constitution and Statutes of 1978, Chapters 1207, 1273, and 1276. LTA 3/25/80 (No. 80/55).

350.0004 Disability Rating. For a veteran to qualify for the disabled veterans' exemption on the regular assessment roll, he or she must be the owner of record as of the lien date when the liability for taxes attaches. Further, he or she must meet all of the qualifications for the exemption as of the lien date. Thus, a veteran who received a 100 percent disability rating as of July 1, 2002, would be eligible for the exemption on the following lien date, i.e., January 1, 2003, for the 2003-04 fiscal year and succeeding years. C 3/10/2004. (2005-1).

350.0005 Disability Requirement. The veteran must have received while in military service a qualifying disability specified in Revenue and Taxation Code Section 205.5(a) as follows:

1. Blind in both eyes, or
2. Loss of use of two or more limbs, or

DISABLED VETERANS' EXEMPTION (Contd.)

3. Totally disabled because of injury or disease.

Any living veteran may qualify under this section with either of the three disabilities on or after the time the exemption becomes effective. Thus, for disease, he must have the disability on or after January 1, 1979 to qualify; for injury he must have the disability on or after January 1, 1975 to qualify. LTA 6/26/79 (No. 79/108).

350.0009 Household Income. Federal laws and regulations provide for the rate of compensation paid to eligible survivors of a veteran because of a service-connected death. While the compensation paid monthly to the surviving spouse is increased for each dependent child, the law does not provide the dependent child with a separate entitlement to the additional benefits. Moreover, the statute and regulations that set forth the surviving spouse's benefits specify that the increased benefits are paid to the surviving spouse, even if the surviving spouse does not have actual or constructive custody of the minor child or the child is in active military service. Thus, the total amount of veterans' benefits paid to the unmarried surviving spouse, including the amount received for three dependent children, should be included in the calculation of household income for purposes of determining the appropriate property tax exemption allowed under Revenue and Taxation Code section 205.5. C 3/15/2005. (2006-1).

350.0019 Principal Residence. A "principal residence" or "principal place of residence" is considered to be equivalent to domicile, that place where a person has his or her true, fixed, and permanent home and to which that individual has the intention of returning to, whenever absent. Factors to consider when determining a person's principal residence or domicile, in addition to where the owner of the property resided during the year, include such indices as (1) the filing of income tax returns in the state, (2) the state of voter registration, (3) the state of vehicle registration, and (4) the state of issuance of a driver's license. There is no time requirement under California property tax law (i.e., a six-month rule) in order to qualify a home as a principal place of residence. C 1/29/2002. (2003-1).

350.0020 Qualification of Spouse by Type of Injury of Veteran.

A. Totally Disabled (Injury or Disease). The *spouse* qualifies if in addition to being a resident of California on the current lien date:

1. Either:
 - a. the veteran had the qualifying injury or disease at time of death, or
 - b. the veteran would have qualified with such an injury or disease except that he died prior to January 1, 1977 (for injury) or January 1, 1979 (for disease), and
2. Either:
 - a. the veteran was a resident of California at time of entry into the service, or
 - b. the out-of-state veteran was a resident of California on January 1, 1975, or

DISABLED VETERANS' EXEMPTION (Contd.)

- c. the surviving spouse was a resident of California on January 1, 1975. The residency requirement is met even though the veteran died prior to January 1, 1975 if the spouse was a resident on January 1, 1975.
- B. Blind in Both Eyes. The spouse qualifies if in addition to being a resident of California on the current lien date:
 - 1. Either:
 - a. the veteran had the qualifying disability on or after November 8, 1966, or
 - b. the veteran would have qualified with such a disability except that he died prior to January 1, 1977, and
 - 2. Either:
 - a. the veteran was a resident of California at time of entry into the service, or
 - b. the veteran was a resident of California on November 7, 1972, or November 8, 1966, or five out of nine years prior to April 15, 1974, or
 - c. the surviving spouse was a resident of California on November 7, 1972. The residency requirement is met even though the veteran died prior to November 7, 1972 if the spouse was a resident on November 7, 1972.
- C. Loss of Use of Two or More Limbs. The spouse qualifies if, in addition to being a resident of California on the current lien date:
 - 1. Either:
 - a. the veteran had the qualifying disability on or after November 2, 1954, or
 - b. the veteran would have qualified with such a disability except that he died prior to January 1, 1977, and
 - 2. Either:
 - a. the veteran was a resident of California at time of entry into the service, or
 - b. the veteran was a resident of California on November 7, 1972, November 2, 1954, or five out of nine years prior to April 15, 1974, or
 - c. the surviving spouse was a resident of California on November 7, 1972. The residency requirement is met even though the veteran died prior to November 7, 1972 if the spouse was a resident on November 7, 1972. LTA 6/26/79 (No. 79/108).

350.0021 Qualification of Unmarried Surviving Spouse. Commencing with the 1994-95 fiscal year, the disabled veteran's exemption is expanded to include the unmarried surviving spouse of a person who served in time of war or in time of peace in a campaign or expedition for which a medal was issued by Congress and who, as a result of a service-connected injury or disease, died while on active duty in the military service. Previously, a person had to be discharged from the service to be considered a "veteran" for purposes of the exemption.

A claimant must provide a letter from the Veteran's Administration certifying that the decedent's cause of death was a service-connected injury or disease. LTA 9/8/93(No. 93/52); C 1/11/96. (Am. M98-2).

DISABLED VETERANS' EXEMPTION (Contd.)

350.0022 Qualification of Unmarried Surviving Spouse—Delayed Finding by DVA. An unmarried surviving spouse of a deceased member of the armed services timely filed for the disabled veterans' exemption, but was found ineligible solely for lack of a determination by the Department of Veterans' Affairs that the death was service-connected. Later, the Department issued its determination of death was service related and backdated the determination to a date prior to the date of the filing of the claim. The claim should be reconsidered and allowed in light of the Department's determination, assuming all other requirements for the exemption are met. C 5/5/97. (M99–1).

350.0023 Qualification of Unmarried Surviving Spouse. Effective January 1, 1979, the exemption is expanded to include the unmarried surviving spouse of a veteran who, as a result of a service-connected disease, died from that disease. Previously, the veteran had to qualify for the exemption (i.e., be rated as 100 percent totally disabled). A claimant must provide a letter from the United States Department of Veterans Affairs certifying that the veteran had suffered a service-connected disease. C 6/8/98. (M99–2).

350.0030 Qualification of Veteran by Type of Injury.

A. *Totally Disabled (Injury or Disease)*

1. The *veteran* qualifies if in addition to being a resident of California on the current lien date:
 - a. He had the qualifying injury on or after January 1, 1975 or the qualifying disease on or after January 1, 1979 (effective dates of exemption), and
 - b. Either:
 - (1) was a resident of California at time of entry into the service, or
 - (2) was a resident of California on March 1, 1975.

B. *Blind in Both Eyes*

1. The veteran qualifies if in addition to being a resident of California on the current lien date:
 - a. He had the qualifying disability on or after November 8, 1966 (effective date of exemption), and
 - b. Either:
 - (1) was a resident of California at time of entry into service, or
 - (2) was a resident of California:
 - (a) on November 7, 1972, or
 - (b) on November 8, 1966, or
 - (c) five out of nine years prior to April 15, 1974.

C. *Loss of Use of Two or More Limbs*

1. The veteran qualifies if, in addition to being a resident of California on the current lien date:
 - a. He had the qualifying disability on or after November 2, 1954 (effective date of the exemption), and

DISABLED VETERANS' EXEMPTION (Contd.)

- b. Either:
 - (1) was a resident of California at time of entry into service, or
 - (2) was a resident of California:
 - (a) on November 7, 1972, or
 - (b) on November 2, 1954, or
 - (c) five out of nine years prior to April 15, 1974. LTA 6/26/79 (No. 79/108).

350.0035 Residence. Section 4(a) of article XIII of the California Constitution provides that the Legislature may exempt the home of a disabled veteran, and Revenue and Taxation Code section 205.5 provides that property constituting the principal place of residence of a disabled veteran is exempt from taxation. Neither provision requires that the home be real property; therefore, a documented vessel used as a residence may qualify. C 4/21/83. (M99-1).

350.0043 Revocable Trusts. The residence of a qualified veteran, the title to which is transferred to a revocable trust, remains eligible for exemption. Only bare legal title vests in the trustee, whether that be the veteran or someone else. As the beneficiary of the trust, the veteran acquires an equitable estate in the trust property and is still regarded as the owner of the property for purposes of the exemption. Additionally, the designation of the veteran and the veteran's spouse as co-beneficiaries would not prevent exemption. C 3/22/90.

350.0044 Supplemental Assessment. Buyer A acquired a home in July, generating a \$40,000 supplemental bill based on the difference between his purchase price and the value on the assessment roll. Before the supplemental tax bill is mailed, the property is sold to Buyer B in September. The \$40,000 supplemental bill is pro-rated for the two owners, with Buyer A receiving an unsecured bill for his period of ownership and Buyer B receiving a bill for his period of ownership, secured by a lien imposed on the property. Buyer B qualifies for the \$100,000 Disabled Veterans' Exemption. Buyer B is eligible for the exemption for his portion of the supplemental bill, assuming that all the requirements for the exemption are met. C 9/18/2000. (2002-1).

350.0045. Totally Disabled. "Totally Disabled" means that the United States Veterans Administration or military service, as a result of injury or disease incurred by a veteran in military service, has rated the veteran's disability at 100 percent or has rated the veteran's disability compensation at 100 percent for inability to secure or follow a substantially gainful occupation. Revenue and Taxation Code section 205.5 makes it clear that it is the Department of Veterans Affairs or the military service from which the veteran was discharged, and not the assessor's office, which is charged with determining whether a veteran meets the definition specified for "totally disabled." Although sections 205.5 and 277 of the Revenue and Taxation Code do not specify a particular form for certification, some form of evidence from the Department of Veterans Affairs or the applicable military service that the veteran has been rated as 100 percent disabled or that the veteran's disability compensation has been rated at 100 percent by reason of the

DISABLED VETERANS' EXEMPTION (Contd.)

veteran being unable to secure or follow a substantially gainful occupation, must be submitted by a person claiming the exemption. C 5/13/80; C 1/7/99. (Am. 2000–1).

350.0050 Trusts, Reserved Life Estates and Joint Tenancies. The disabled veterans' exemption claimed by an eligible veteran or a spouse thereof is not impacted by a subsequent transfer of the property if the transfer is: to a trust, if the veteran or the spouse is the sole present beneficiary or if the trust is revocable; a transfer that creates a future interest but reserves a life estate in the grantor veteran or spouse; or, a transfer that creates a joint tenancy in which the transferor veteran or spouse is one of the joint tenants provided, however, that only the retained joint tenancy interest is eligible for exemption. C 6/25/85; C 10/15/92. (M99–1).

360.0000 DISASTER RELIEF

See Base Year Value Transfer—(c) Disaster Relief

360.0001 Appeal. Revenue and Taxation Code section 51 presents taxpayers seeking a reduction in the assessed value of disaster-damaged property with the option of choosing the specific remedy provided in subdivision (c) (disaster relief under Revenue and Taxation Code section 170) or the general remedy in subdivision (a)(2) thereof (Proposition 8 claim). The existence or nonexistence of a disaster relief ordinance does not prevent a property owner from seeking a reduction in value through the means of an assessment appeal. C 11/14/96. (M99–1).

360.0001.005 Appeal. An assessment appeals board has jurisdiction to hear and decide an application filed by a property owner appealing the assessor's denial of a claim for the transfer of a base year value for real property damaged or destroyed by disaster under Revenue and Taxation Code section 69. An application may be filed during the regular filing period for the year in which the new base year value is established for the replacement property or in any of the three succeeding years. C 10/20/2004. (2005–2).

360.0002 Appraisal Unit. The separate appraisal unit rule for damaged property caused by disaster found in Property Tax Rule 461(d) applies only until the property is restored following the damage as of which time Property Tax Rule 461(e) applies. C 4/13/95. (Am. M99–1).

360.0004 Assessment. "Repaired," as used in Revenue and Taxation Code Section 170(g), means to put back into a sound or healthy state and, when applied to land as distinguished from structures, may merely encompass measures which simply prevent further damage when there is no practical means of doing more. Thus, the construction of a rock wall to prevent further erosion of previously damaged ocean front properties could constitute "full repair" for purposes of Section 170(g), in which event taxable land values reduced as the result of the prior erosion would be returned to their respective adjusted base year values. C 4/26/88.

DISASTER RELIEF (Contd.)

360.0010 Calculation of Taxes During Reconstruction. In each year of reconstruction, the amount of the initial reduction in base year value should be multiplied by an estimated percentage of restoration to determine the amount of taxable value, and an inflation factor should be applied to all interim values enrolled for years subsequent to the year of last enrollment prior to the calamity.

When a calamity occurs prior to the lien date, Revenue and Taxation Code Section 170(e) directs the assessor to prorate the tax liability of the property in its undamaged condition on the basis of the fraction of the year prior to the month that the calamity occurs. The tax liability in the damaged condition is prorated in proportion to the fraction of the fiscal year that is remaining including the month of the calamity. There is no provision in this case for excluding the portion of the fiscal year remaining after the property is restored.

When a calamity occurs after the lien date, a similar proration is made for the current fiscal year. In addition, if the property is completely restored in the next fiscal year, a proration is made based upon the relationship of the portion of the fiscal year prior to and including the month of rehabilitation and the remainder of the fiscal year. LTA 1/26/82 (No. 82/12).

360.0015 Discovery of Calamity. There is no limitation within Revenue and Taxation Code Section 170(d) of how the Assessor determines a property has suffered damage caused by calamity, and there is no legal basis for not mailing applications for reassessment to calamity victims where knowledge of the calamities was obtained from such persons. C 6/29/84.

360.0016 Documented Vessels. The provisions of Revenue and Taxation Code Section 170 do not provide authority for considering a salmon drought a disaster entitling owners of commercial fishing vessels to assessment relief thereunder. Section 170 contemplates assessment relief because of damage to property caused by a major misfortune or calamity, not economic loss unrelated to physical damage or destruction.

If vessels are used for other than activities enumerated in Revenue and Taxation Code Section 227, the special assessment treatment of that section is inapplicable, regardless of the reason for change in use. C 11/16/92.

360.0019 Fault. As used in Revenue and Taxation Code section 170 subdivision (a), pertaining to property damaged or destroyed without the assessee's or taxpayer's fault, the term "fault" encompasses acts or omissions involving some degree of willfulness and foreseeability. At a minimum, "fault" means "willful negligence," but not "ordinary negligence." The distinction between ordinary and willful negligence can be illustrated by the example of a house fire caused by a person unknowingly emptying burning cigarette refuse into a waste-basket containing flammable material (ordinary negligence) or caused by a person consciously deciding to smoke in close proximity to an open container of gasoline (willful negligence).

Defining "fault" as "willful negligence" is consistent with the objective of section 170 and is also consistent with judicial construction of federal statutory

DISASTER RELIEF (Contd.)

provisions relating to the analogous federal income tax casualty loss deduction. OAG 5/14/75 (No. CV 74/257); C 4/25/96; LTA 9/11/96 (No. 96/59). (M98–1; Am. M98–2).

360.0021 **Fruit Trees Growing Crops.** Growing crops cannot qualify for calamity reassessment because they are not taxable. However, fruit trees damaged by wind and rain storms may qualify if the damage exceeds \$5,000. The mere possibility of a lesser crop next year probably does not fall within the definition of physical damage to the property. C 3/1/78.

360.0025 **Helicopter.** A helicopter completely destroyed as the result of a crash caused by mechanical failure qualifies for reassessment under Revenue and Taxation Code Section 170(a)(2) as property damaged by calamity. C 3/26/82.

360.0026 **Homeowners' Exemption.** Temporary absence from a dwelling for repairs made necessary by a natural disaster, such as a flood or fire, will not result in the loss of the homeowners' exemption, provided the owner demonstrates that he or she returned to the dwellings when possible to do so. When a dwelling has been totally destroyed, however, the exemption is not applicable until the structure has been replaced and is occupied as a dwelling, except as provided in subdivisions (d), (e), and (f) of Revenue and Taxation Code section 218. There is no federal or state law that exempts privately-owned dwellings in the course of construction from property taxation. C 3/20/92; LTA 11/24/2004 (No. 2004/069). (M99–1; Am. 2005–2).

360.0030 **Misfortune or Calamity.** For purposes of applying Revenue and Taxation Code section 51(c), which provides for disaster relief pursuant to Revenue and Taxation Code section 170, “misfortune or calamity” requires a sudden, distinct occurrence of damage or destruction. Similarly, damage or destruction resulting from a “misfortune or calamity” within the meaning of Revenue and Taxation Code section 70(c) requires causation from a sudden event. C 4/24/2000. (2003–1).

360.0034 **Restricted Access.** The temporary fencing by a county of an area including homes which were in close proximity to but not physically damaged by a recent landslide did not restrict the access to such property for purposes of Revenue and Taxation Code Section 170(a) where the residents of such homes were permitted to enter the fenced area and continue to occupy their homes. C 5/25/95.

360.0040 **State Assesseees.** Revenue and Taxation Code Section 170 is not applicable to state assesseees. Section 170 does not reference the Board, Board-assessment statutes contain no reference to Section 170, and the Board concluded on June 14, 1978, that the provisions of article XIII A of the California Constitution, which Section 170 implements, are not applicable to state assesseees. C 11/9/82.

360.0045 **Stolen Property.** Revenue and Taxation Code section 170 is not applicable to property which has been stolen but not recovered. For reassessment

DISASTER RELIEF (Contd.)

of property to occur, section 170 requires that the property be physically damaged or destroyed by a calamity. OAG 5/14/75 (No. CV 74/257); C 5/6/76; C 12/3/84. (Am. M98–2).

360.0050 **Taxpayer Options.** Revenue and Taxation Code sections 51 and 170 provide property owners alternative means for obtaining disaster relief. The sections are not mutually exclusive. If, for some reason, a property is not eligible for assessment relief under section 170, it may nonetheless qualify for assessment reduction under section 51 on the basis that its current market value is less than its factored base year value. C 11/14/96. (M99–1).

370.0000 DOCUMENTARY TRANSFER TAX ACT

370.0001 **Disclosure of Amounts.** Information pertaining to documentary transfer taxes paid, in the hands of the assessor, should be provided to assessees upon requests made pursuant to Revenue and Taxation Code Sections 408 or 408.1. The assessor is required to provide market data in his possession to an assessee, and documentary transfer taxes information, if used by the assessor in arriving at market values, is market data subject to the disclosure requirements. C 3/25/77.

370.0005 **Easements.** Easements are subject to the provisions of the Documentary Transfer Tax Act if they potentially may endure for a substantial period of time, such as perpetual easements, easements for life, and easements for a fixed period of years that can be renewed by the easement holders or are of sufficient length so as to approximate perpetual easements or easements for life. OAG 3/1/79 (No. CV 78-132, Vol. 62, p. 87).
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370.0015 **State Teachers' Retirement System.** Deeds transferring the title of real property to the State Teachers' Retirement System are not subject to a county documentary transfer tax. OAG 4/11/85 (No. 85-206, Vol. 68, p. 71).

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E

EMINENT DOMAIN

See Base Year Value Transfer—(b) Government Acquisition

EQUALIZATION

*See Assessment Appeals Board
County Board of Equalization
State Board of Equalization*

390.0000 ESCAPE ASSESSMENTS

*See Assessment Appeals Board
Homeowners' Exemption
State-Assessed Property*

390.0001 Assessment Appeals. There is no section of the Revenue and Taxation Code that modifies the four-year statute of limitations for escape assessments based solely on the fact that an application for reduction of assessment has been filed. There is, however, a so-called “late-discovery exception” thereto (*Silver v. Watson*, 26 Cal.App.3d 905), which may be applicable if it is established that a cause of action could not with reasonable diligence have been discovered prior to the running of the statute. (See *Orange County Rock Products Co. v. Cook Bros. Equipment Co.*, 246 Cal.App.2d 698.) C 12/17/82.

390.0010 Assessment Year. As used in Revenue and Taxation Code Sections 531.2 and 532, “assessment year” means the period set forth in Revenue and Taxation Code Section 118, a given lien date to the next succeeding lien date. LTA 7/1/88 (No. 88/50).

390.0030 Dissolved or Bankrupt Corporation. Collectibility of tax liability resulting from an escape assessment is dependent upon whether or not real property subject to a lien is involved. If it is, an escape assessment against a dissolved or bankrupt corporation should be pursued, but if there is no lien and the corporation no longer exists, the obligation of the assessor to pursue an escape assessment should cease. C 8/31/81.

390.0031 Evidence of Value. Evidence of value coming to light after a lien date may not be used to establish a basis for an escape assessment if the evidence was not in existence on the lien date and could not, therefore, have been considered when establishing the lien date value. C 3/4/87.

390.0033 Foreclosed Property. A trust deed beneficiary who makes a credit bid on the secured real property at a trustee's sale and thereby obtains title to such real property is considered a “purchaser for value” of the real property within the meaning of Revenue and Taxation Code section 531.2. The term “bona fide”, however, generally is interpreted to mean “in good faith . . . without knowledge or notice of the prior interest.” Thus, questions of fact may arise with regard to whether or not a given foreclosing trust deed beneficiary is “bona fide” within the meaning of section 531.2 as to a forthcoming escape assessment. C 8/9/96; C 1/13/97. (M99–1).

ESCAPE ASSESSMENTS (Contd.)

390.0055 Mandatory Audit. If an audit discloses that computer equipment was incorrectly classified on the business property statement and was assessed at a lower value as a result of the misclassification, the assessor may issue an escape assessment pursuant to Revenue and Taxation Code section 531.4 for the value of the equipment that was underassessed. However, if the taxpayer accurately reported the computer equipment, but the assessor determines by audit that incorrect lives were used that caused the equipment to be assessed at a lower value, the equipment is not subject to an escape assessment. A change in a life table involves the exercise of value judgment, and the assessor is not authorized to correct such an error under Revenue and Taxation Code section 4831. C 1/3/2005; 4/6/2006. (2006-2).

390.0060 Morgan Property Taxpayers' Bill of Rights. Legislation, effective January 1, 1994, contains numerous provisions relating to assessment appeals, escape assessments, and information to provided assesseees and it establishes "The Morgan Property Taxpayers' Bill of Rights." The State Board of Equalization is required to designate an independent "Property Taxpayers' Advocate" who is to be responsible for reviewing the adequacy of procedures relating to the distribution of information regarding property tax assessment matters among the Board, assessors, and taxpayers and of procedures relating to the expeditious handling of Board, assessor, and taxpayer inquiries, complaints and problems. LTA 10/12/93 (No. 93/62); LTA 12/30/93 (No. 93/80).

390.0065 Notice. Pursuant to Revenue and Taxation Code section 531.8, a Notice of Proposed Escape Assessment is a mandatory legal prerequisite to making an escape assessment. Absent such notice, no escape assessment may be levied and, if levied, is invalid. Additionally, the assessor's failure to send notice within the four-year time limitation period of Revenue and Taxation Code section 532 completely bars an escape assessment made outside that period. C 10/13/98. (2000-1).

390.0080 Property Not Enrolled/Increases in Value. Both taxable, tangible property not previously enrolled and increases in value to such property that has previously been enrolled should be considered as escaped property, and escape assessments rather than roll corrections are proper in such instances. While Revenue and Taxation Code Section 4831(a) provides that any error of the assessor resulting in incorrect entries on the roll may be corrected, it is errors or defects of a clerical nature that are contemplated, not errors which have allowed properties or portions of properties to escape assessment. Accordingly, where an assessor has received notice of a change in ownership but has not acted thereupon, or where he has received late notice of a change in ownership due to death, escape assessments should be made. C 1/21/82.

390.0083 Recorded Document. The recording of documents of title is a form of notice to the assessor, since assessors regularly receive recorded information from the recorder's office. The recording of a death certificate is considered to be the recording of a document evidencing a change in ownership, and the four-year statute of limitations for escape assessments applies. However, if it is not possible

ESCAPE ASSESSMENTS (Contd.)

to relate the decedent's name on a death certificate with the decedent's name on title to property owned, the recording of a death certificate would not be considered adequate notice to an assessor, and the eight-year statute of limitations for escape assessments would apply. C 3/27/2001. (2003-1).

390.0085 **Statute of Limitations.** The limitation under Statutes of 1979, Chapter 242, Section 43 of the authority of a county assessor to enroll escape assessments for years prior to 1979-1980 to reflect the "full cash value" of any property is constitutional. OAG 4/18/80 (No. 79-1005, Vol. 63, p. 304). (Am. M99-1).

390.0086 **Statute of Limitations.** On and after January 1, 1988, Revenue and Taxation Code section 51.5 provides that any error or omission in the

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ESCAPE ASSESSMENTS (Contd.)

determination of a base year value which involves the exercise of an assessor's judgment as to value may be corrected only if it is corrected on the current roll being prepared within four years after July 1 of the assessment year for which the base year value was first established. Nonjudgmental errors, however, may be corrected in any assessment year in which the error or omission is discovered. LTA 7/1/88 (No. 88/50). (Am. M99–1).

390.0088 Statute of Limitations. On or after January 1, 1995, escape assessments may be made within the period of the statute of limitations of Revenue and Taxation Code section 532 in effect at the time the escape assessments are made, notwithstanding that such escape assessments would have been barred under the provisions of the previous version of the statute. C 2/6/95. (M99–1).

390.0089 Statute of Limitations. A preliminary change in ownership statement that is filed three years after the date of change in ownership is not considered a timely filing under Revenue and Taxation Code section 480. In order to be timely, it must be filed within 45 days. Pursuant to Revenue and Taxation Code section 532(b)(2), the applicable statute of limitations period for such unrecorded changes in ownership is eight years after July 1 of the assessment year in which the property escaped taxation. Because property is considered to escape assessment each year the change in ownership remains undiscovered, the assessor may issue escape assessments eight years prior to the year in which the change in ownership is discovered. C 6/8/2007. (2008–1).

390.0090 Timely Notice. An escape assessment is timely if made within a period specified in Revenue and Taxation Code section 532. The fact that notice thereof is sent to the assessee at a later date does not affect the validity of the escape assessment. C 6/14/79.

390.0100 Unrecorded. The phrase “unrecorded change in ownership or change in control” in Revenue and Taxation Code section 532(b) refers solely to deeds or other documents reflecting a change in the recorded title to property and does not refer to change in ownership statements. The statute of limitation periods for making arbitrary and escape assessments are based upon both the filing of documents of title *and* the filing of change in ownership statements. The basic purpose of the requirement for filing change in ownership statements is to give notice and information to the assessor. However, the recording of documents of title is also a form of notice to the assessor, since assessors regularly receive recorded information from the recorder's office. Accordingly, the property tax consequences for failing to file a change in ownership statement are less severe if documents of title have been recorded and more severe if documents of title have not been recorded. C 2/27/2001. (2002–1).

400.0000 EXEMPTION

See Aircraft of Historical Significance Exemption
Business Inventory Exemption
Church Exemption
Church Parking Area Exemption
College Exemption
Disabled Veterans' Exemption
Free Public Library and Free Museum Exemption
Fruit, Nut Tree, and Grapevine Exemption
Growing Crops Exemption
Homeowners' Exemption
Lessor's Exemption
Local Government-Owned Property
Pets Exemption
Public Schools Exemption
Rental Housing Exemption
State-Owned Property
State University Exemption
Tribal Housing Exemption
Veterans Exemption
Veterans' Organization Exemption
Welfare Exemption
Wine Exemption

400.0001 Applicability. Property tax exemptions are exemptions from ad valorem taxes on real property only, not from special taxes or special assessments. C 9/6/85.

400.0036 Late Filing–Supplemental Assessment. The availability of exemptions, other than the homeowners' exemption, is a matter of timing; and failure to file timely results in a partial loss of exemption, and failure to file on or before the date on which the first installment of taxes on the supplemental tax bill becomes delinquent results in total loss of exemption. C 8/10/87.

400.0040 Low Value Property Exemption. “All real property” as used in Revenue and Taxation Code section 155.20 means all real property satisfying the value limitations in that section is to be exempted. C 6/29/95. (M99–1).

400.0050 Property Acquired After Lien Date. Revenue and Taxation Code section 271 is applicable only in instances in which qualifying organizations become owners of properties after the lien date. C 3/3/83.

400.0051 Property Acquired After Lien Date. Revenue and Taxation Code section 271 is applicable to property acquired by a qualified organization after the lien date, provided the property is of a kind which would have been qualified for exemption if owned by the organization on the lien date. Qualification for exemption is determined by the use to which the property is put by the acquiring qualified organization, not the use made of the property by the former owner. C 4/1/88.

EXEMPTION (Contd.)

400.0052 Property Acquired After Beginning of Fiscal Year. Revenue and Taxation Code section 271(a)(3) applies to secured roll personal property as well as to secured roll land and improvements acquired by the types of organizations specified in that section. Acquisitions occurring after the beginning of a fiscal year are exempt from tax on a prorated basis that reflects the period during the fiscal year that the organization owned the property, if all exemption requirements are met. Section 271 provides exemption application filing requirements and reductions in relief when applications are not timely filed. LTA 2/7/96 (No. 96/07).

410.0000 EXPORTS

410.0001 Cable at Dockside. Cable consigned for shipment to an out-of-state point but located on the dock on the lien date is taxable. Until such time as it begins its movement or physical journey by crossing the “waters’ edge” or by being delivered to a common carrier for the continuous journey abroad, the cable has not entered into the stream of export. C 5/16/78.

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415.0000 FARMLAND SECURITY ZONE

*See California Land Conservation Act
Open-Space Lands*

415.0001 Alternative Assessment. Revenue and Taxation Code section 423.4 is constitutional in authorizing property to be assessed at 65 percent of a specified value under the circumstances described therein. OAG 3/10/99 (No. 98–1106, Vol. 82, p.52). (2000–1).

420.0000 FEDERAL INSTRUMENTALITIES

420.0001 American National Red Cross. As an instrumentality of the United States, the Red Cross and its property is immune from state and local taxes when lawfully pursuing its mandated purposes. This immunity does not result from any grant of exemption by the State but is a function of its status as an instrumentality of the federal government. C 1/17/91.

420.0002 Civil Air Patrol. The Civil Air Patrol is an instrumentality of the United States for purposes of immunity from property taxation. C 4/22/87.

420.0003 Marketing Committees (U.S.D.A.). The following committees and other similar committees when established by the U.S. Department of Agriculture under the authority of Title 7 of the Code of Federal Regulations are unincorporated instrumentalities of the United States Government and exempt from local taxation unless otherwise specifically authorized by Congress, to wit:

Navel Orange Administrative Committee
Valencia Orange Administrative Committee
Lemon Administrative Committee
Nectarine Administrative Committee
Kiwifruit Administrative Committee
California Date Administrative Committee
California Desert Grape Administrative Committee
Raisin Administrative Committee
Pear Commodity Committee
Peach Commodity Committee
Plum Commodity Committee
Tokay Industry Committee
Winter Pear Control Committee
California Olive Committee
Oregon-California Potato Committee
Prune Marketing Committee
Walnut Marketing Board
Almond Board of California C 3/29/91.

FEDERAL INSTRUMENTALITIES (Contd.)

420.0004 Resolution Trust Corporation. Property owned by the Corporation is subject to real property taxes if those taxes are assessed based on the property's value. Its personal property is immune from all forms of personal property taxation. Preexisting liens for taxes and interest will be recognized, but fines or penalties will not be, and no property of the Corporation is subject to levy, attachment, garnishment, foreclosure or sale without the Corporation's consent. LTA 10/16/91 (No. 91/72).

420.0005 U.S. Department of Housing and Urban Development. Although HUD is a federal instrumentality, property owned and held by HUD in its "Property Disposition Inventory" is subject to property taxation because of a specific waiver found in Title 12 United States Code Section 1714. Thus, under article XIII of the California Constitution, county assessors are required to assess such properties. C 5/2/86.

420.0010 United States Reservations. Neither the State of California nor any of its agencies may tax privately-held property located on a United States government reservation acquired by the United States prior to September 19, 1939, unless the United States authorized such taxation or the State of California specifically reserved the right to tax such property at the time of acquisition by the United States. On or after September 19, 1939, however, the State of California reserved to itself and its agencies the power and jurisdiction to tax privately-held property located on land thereafter ceded to or acquired by the United States. C 3/12/59. (M99–2).

430.0000 FINANCIAL CORPORATIONS

See Mobilehome

430.0005 Personal Property Exemption. The personal property of financial corporations is exempt from property taxation by reason of State in-lieu taxation of these corporations. Corporations whose principal business is leasing tangible personal property are not financial corporations. LTA 10/10/79 (No. 79/170).

430.0006 Personal Property Exemption. In the case of banks and financial corporations, all corporate net income is subject to special franchise tax rates, regardless of whether the income is derived from financial or nonfinancial activities. Thus, the decision in *Massachusetts Mutual Life Insurance Company v. City and County of San Francisco*, 129 Cal.App.3d 876, is not applicable, and personal property owned by a bank or financial corporation continues to be exempt from property taxation, regardless of the use of the property. LTA 7/27/82 (No. 82/90).

FINANCIAL INTEREST STATEMENT, APPRAISER

See Appraiser Certification

FIXTURES

*See Improvements Valuation
Supplemental Assessment*

435.0000 FOREIGN GOVERNMENT

See Privileges and Immunities

435.0050 Real or Personal Property. Property owned or leased by a foreign government, whether used by consular officers or employees, is subject to property taxes unless exempted under the 1966 *Vienna Convention on Consular Relations, Article 32* or by specific provisions contained in a treaty between the United States and the foreign government. Article 32 does provide an exemption from taxes, but in the case of a lease, the exemption does not apply if the taxes are payable by the person (lessor) who contracted with the sending State (foreign government) or with a person acting on its behalf. Relevant treaties must be reviewed. Absent exemption by Article 32 or by treaty, a lease agreement requiring a foreign government to pay or reimburse the owner for local property taxes does not shift the tax burden from the lessor but only constitutes a contract obligation. C 7/7/83; C 6/8/87; C 12/4/98. (Am. M99-1; 2000-1).

435.0060 Real Property. Real property located in California but owned by a foreign nation may be immune from property tax pursuant to treaty or other agreements executed by the United States and the foreign nation. In each instance, the treaty or agreement must be examined to ascertain whether or not immunity has been granted.

Pursuant to the Taiwan Relations Act, Public Law 96-8 of April 10, 1979, as implemented by an agreement dated October 2, 1980, the real property of the Coordination Council for North American Affairs, a Taiwan instrumentality, is immune from property tax if used for the organization's authorized functions. C 1/27/92. (M99-1).

435.0065 Real Property Acquired After Lien Date. Property acquired by a foreign government for use as a consulate after the lien date but prior to the start of the fiscal year is exempt from property taxes for that fiscal year. California is not in a position to refuse an exemption required by federal law on the technical ground that the requirements therefor were not met as of the lien date but rather, these technical grounds must give way to constitutional requirements. However, prorated taxes paid into escrow for a prior fiscal year are not subject to refund but are merely contractual reimbursement to the prior owner upon sale. C 8/4/71. (M99-1).

445.0000 FREE PUBLIC LIBRARY AND FREE MUSEUM EXEMPTION

445.0015 Eligibility and Termination. Eligibility for the exemption is to be determined as of the lien date each year. Property which is leased or rented for such purposes can only be exempted after compliance with the claim provisions of the Revenue and Taxation Code.

The exemption is not terminated at once but must be determined as of the lien date next following the expiration of the lease or rental agreement. OAG 7/8/75 (No. CV 75-60, Vol. 58, p. 538); C 10/29/96. (Am. M99-1).

445.0030 Free. Revenue and Taxation Code Section 202 (a)(2) exempts properties used for free public libraries and free museums. Libraries and museums are either free or not free. While it would seem that persons or

FREE PUBLIC LIBRARY, ETC. (Contd.)

organizations operating free public libraries or free museums would want to inform the general public of that fact through their signs, promotional materials, and advertising in order to increase public awareness and attendance, Section 202(a)(2) does not require the presence of a sign stating that the library or museum is “free”, “no admittance charged,” “open without charge”, etc.

If a library or museum is a free library or free museum, a sign within the premises requesting donations would not interfere with the availability of the exemption, so long as no one is turned away for refusal or inability to make a donation. C 5/30/96.

445.0039 Leased Property. For a museum and the leased land underlying the building to be eligible for the free museum exemption, the building itself would have to be primarily used as a museum, and the museum would have to be free and open to the public on a regular basis. In such case, the leased land underlying the building also would be deemed primarily used for the museum and, hence, eligible for the exemption.

For leased land supporting an underground parking garage as well as a museum to be eligible for the exemption, the building would have to meet the requirements for the exemption, and the parking garage would have to be primarily used for qualifying museum parking. If the parking garage is open to the general public and provides free parking to museum patrons, but charges for parking to non-museum patrons, both the garage and the leased land would be ineligible for the exemption. In that event, the parking garage is operated for commercial purposes unrelated to the use by the museum. No part of property or properties used for commercial purposes is eligible for the exemption. C 3/24/2004. (2005–2).

445.0040 Library. Public libraries operating under a joint powers agreement receive exemption on the personal property owned by the joint powers entity as property owned by government. Leased property used for public library purposes qualifies for exemption under Revenue and Taxation Code section 202(a)(2), if the benefit of the exemption inures to the library system as required by Revenue and Taxation Code section 202.2. C 8/11/95.

445.0050 Museum. The decision in *Fellowship of Friends, Inc. v. Yuba County*, 235 Cal.App.3d 1190 holds that to qualify for exemption as a museum, a property must be specifically designated for the display and storage of artifacts or objects of art, be open to the public during its normal working hours, and be advertised as a museum. The predominant purpose and primary use of the property must be as a museum that houses and displays objects of lasting value. LTA 1/15/92 (No. 92/04); C 1/29/2004. (Am. 2005–1).

445.0065 Public Access. In addition to being free, a public library or museum property must be accessible to the general public on a regular, publicized basis in order to qualify for either exemption. C 5/7/87; C 5/7/87.

445.0066 Public Access. To satisfy the “open to the public” requirement for exempting property used as a free museum, the property must be open to the

FREE PUBLIC LIBRARY, ETC. (Contd.)

public on a regular basis and the public must be aware that such is the case. In *Fellowship of Friends, Inc. v. Yuba County*, 235 Cal.App.3d 1190, the court found that the free museum exemption did not apply in the case of a property located in an isolated location that was only open to the public two days a week with little advertising as to its existence or hours of operation, although not for that reason. C 7/15/92.

450.0000 FRUIT, NUT TREE, AND GRAPEVINE EXEMPTION

450.0001 Grafting. Property Tax Rule 131(e) contemplates and requires that trees or vines reach commercial production before a new four-year exemption can apply as the result of grafting. Then, only if the trees or vines are grafted so thoroughly so as to make them nonproducing should the exemption be restored, just as if the producing trees or vines had been replaced by nonproducing trees or vines. LTA 7/7/87 (No. 87/50).

450.0002 New Exemption Period. Trees and vines damaged by the December 1990 freeze while they were in exempt status are afforded a new exemption period as of March 1, 1991, by the October 14, 1991 amendment to Revenue and Taxation Code section 211(a). The new exemption period applies for trees and vines damaged to the extent they require pruning to the trunk or bud union to establish a new shoot. The exemption period for qualified vines extends through February 28th 1994 and for trees through February 28th 1995. LTA 1/29/92 (No. 92/09).

460.0000 FULL CASH VALUE

*See Assessed Value
Value*

460.0001 Determination by Assessment Appeals Board. Insofar as Property Tax Rule 324 requires an assessment appeals board to determine “full cash value”, the board is bound by the definition of “full cash value” in section 2(a) of article XIII A of the California Constitution. Thus, absent a change in ownership or any new construction on or after March 1, 1975, the full cash value of real property is that value as defined in Revenue and Taxation Code section 110, as of March 1, 1975, adjusted annually by the inflation factor. C 10/14/81.

460.0004 City Regulatory Agreement—Affordable Housing. A city redevelopment agency, with assistance from the City, increases the supply of affordable housing within its redevelopment area by requiring developers seeking approval to build housing projects and sell a portion of the dwelling units (affordable units) to low or moderate income purchasers (purchasers).

In order to acquire the property, the purchaser must obtain a first mortgage from a private lender, the amount of which is tied to the median-area income, the purchaser’s income, and current interest rates (first mortgage). Additionally, prior to closing, each purchaser of an affordable unit must enter into a recorded regulatory agreement with the City that requires that the purchaser execute a

FULL CASH VALUE (Contd.)

promissory note and second trust deed, referred to as a silent second mortgage, under which the City may require payment after a period of years.

The recorded regulatory Agreement entered into by the City and the purchaser constitutes an enforceable government restriction under section 402.1. Thus, in the absence of evidence of comparable sales of similarly restricted property, the value of the affordable units for property tax purposes, under section 110(b), is their purchase price, which in each case may be estimated by adding the sum of the down payment and the face amount of the first mortgage to the assessor's estimate of the present economic value of the silent second. C 2/8/2007; C 4/10/2007. (2008-1).

460.0005 Energy Tax Credit. While there are some differences between the California energy tax credit and the federal investment tax credit, the reasoning in *May Department Stores v. Los Angeles County* (1987) 196 Cal.App.3d 755, is equally applicable to both types of credits, i.e., the full cash value of property should be determined without consideration being given to either. C 8/3/89.

460.0010 Equipment Leased To Federal Instrumentalities. The legal incidence of sales tax upon equipment leased to federal instrumentalities is upon such instrumentalities and therefore, violates the government's immunity from state taxation (*United States v. California State Board of Equalization*, 650 F.2d 1127, and *California State Board of Equalization v. United States*, 456 U.S. 901). Thus, sales tax is not a part of the normal replacement cost of equipment leased to a federal instrumentality, and the fair market value of such equipment should not include a component for sales tax. LTA 10/1/82 (No. 82/112).

460.0014 Inherited Property. While no negotiations occur at the time a property transfers by inheritance, the value of the property must be established at the amount it would sell for in an arms length transaction involving knowledgeable parties neither of which could take advantage of the exigencies of the other. In valuing such property by the income approach to value, Property Tax Rule 8(d) is applicable, and noneconomic rents payable under existing leases are to be ignored. A valuation of property based on contract rent which is below economic rent reflects only the lessor's interest and does not include the bonus value of the leasehold interest. *Dennis v. Santa Clara County*, 215 Cal.App.3d 1019.

The existence of a lease that generates non-economic rent does not constitute damage, destruction or other factors causing a decline in value under Revenue and Taxation Code section 51(b). C 12/2/93.

460.0015 Investment Tax Credit. Full cash value of property is to be determined without consideration being given to any investment tax credit which might be available as the result of a taxpayer's purchase of the property. Such credit is simply a reduction of federal income tax liability, not a purchase discount or rebate offered by a seller as the result of "market" considerations. LTA 2/18/83 (No. 83/21).

FULL CASH VALUE (Contd.)

460.0020 **Land Sold By City.** Full cash value of land sold by a city to a corporation for specified development is to be determined without consideration being given to the fact that ownership of the land will revert to the city if the development is not completed within an agreed-upon time frame. Revenue and Taxation Code section 402.1, which pertains to land use restrictions, not to contingencies which might affect ownership of land, is inapplicable. C 3/12/85.

460.0022 **Liquidated Damages.** Liquidated damages are not part of the consideration paid for a property, and a provision for liquidated damages in a purchase agreement does not result in a discount from the property's purchase price. Rather, liquidated damages represent a contractually agreed-upon amount stipulated as a reasonable estimation of actual damages to be recovered by one party if the other party breaches the agreement. Thus, the full cash value or fair market value of a property does not change depending on whether a liquidated damages provision is invoked. C 12/3/2001. (2003-1).

460.0025 **Oil and Gas Leases in Tax Exempt Properties.** Revenue and Taxation Code sections 107.2 and 107.3 and subdivision (b) of Property Tax Rule 27 apply to the valuation of oil and gas possessory interests created on or before July 26, 1963, and extended or renewed after that date pursuant to Public Resources Code section 6827, which prohibits a reduction of the royalty rate. Public Resources Code section 6827.2, which authorizes the State Lands Commission to renegotiate the lease including the royalty rate if continued production is economically unfeasible under the terms of the lease, is not applicable since that section was enacted after the lease was last extended or renewed and, even if it had been in effect, there is no indication that an increase in assessed value would result in a finding by the Commission that continued economic production would be economically unfeasible. C 7/21/92. (M99-1).

460.0030 **Tax Sale Appraisal.** The fair market value of property as of the date of its sale is to be used for assessment purposes, not the Revenue and Taxation Code section 3698.5 value calculated to determine the minimum price for the property at a tax sale. C 3/29/83.

460.0031 **Tax Sales.** The presumptions of full cash value under Revenue and Taxation Code section 110 do not apply to execution and/or foreclosure sales since these are forced sales and thus considered "non-market" transactions. Property Tax Rule 4(b) requires that existing debt encumbering a property, including delinquent payments on Mello-Roos bonds, be added to the stated purchase price in order to arrive at the actual consideration paid. C 3/26/99. (2000-1).

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470.0000 GAS

470.0001 Gas in Storage. Gas that is extracted from the ground and then stored in a dry well is personal property. However, “cushion gas”, i.e., gas not available for recapture from underground storage, may be classified as land. C 4/30/79.

470.0005 Production of Methane Gas. To the extent that a landfill site or an area within a landfill site becomes suitable for resource development by the addition of refuse, a new property interest is created. The right to extract or produce the gas, whether held by the landfill owner or by an operator who purchases the right, constitutes property not previously taxed that must be appraised and when found to have value, it shall be added to the assessment roll. When an operator purchases the right, that change-in-ownership of the right provides an additional basis, under the provisions of article XIII A of the California Constitution and Revenue and Taxation Code Section 61 for establishing a base year value. Likewise, the development by the owner of the landfill site for methane production would constitute an alteration converting the property to a different use under Revenue and Taxation Code Section 70(a)(2).

The most appropriate method of valuing a production interest in a landfill gas property is similar to that employed in valuing an oil or gas property, i.e., the income approach to value. The income approach, of course, should include anticipated future gross income and expenses. This approach yields a property value which includes the value of improvements associated with the production of landfill methane and the right to produce. If the royalties paid are deemed to be economic, the royalty approach would also be a valid technique for valuing the right to produce. This approach is a form of the income approach and yields a direct value for the right to produce exclusive of the value of associated improvements.

The right to extract or produce landfill gas is usually granted for a period of from 10 to 20 years, depending on the anticipated active gas generating cycle of the fill. Therefore, for all intents and purposes, the producer is the beneficial owner of the right to produce all the gas and should be the assessee. LTA 5/15/84 (No. 84/44).

480.0000 GOLF COURSES

480.0025 Disaster Relief. Property owners began using reclaimed water to irrigate golf courses and open space areas. The reclaimed water contained a high level of sodium which damaged the golf courses. Extensive rehabilitation occurred to mitigate the damage to the courses.

The damage occurred gradually over a period of time as the sodium accumulated in the soil; thus, the damage resulted from the ongoing watering and not from a single, distinct occurrence. As a result, the ongoing irrigation of the golf course with the reclaimed water was not a “misfortune or calamity” within the meaning of Revenue and Taxation Code section 51(c) and *T. L. Enterprises, Inc. v. Los Angeles County* (1989) 215 Cal.App.3d 876. C 10/5/99. (2001–1).

490.0000 GOVERNMENT-OWNED PROPERTY

See Leased to Government

Local Government-Owned Property

State-Owned Property

490.0001 Farmers Home Administration Properties. The Federal Housing and Community Development Act of 1977, Section 512, amends the Federal Housing Act of 1949 to provide that the Farmers Home Administration will pay real estate taxes on Government property acquired by foreclosure. All property acquired pursuant to the Housing Act of 1949 is now subject to property taxation. LTA 1/13/78 (No. 78/3).

490.0004 Hospital District. If a hospital district purchases a partial interest in real property located within its boundaries, the property, to the extent of the interest purchased, is exempt from property tax under section 3(b) of article XIII of the California Constitution. There is no legal requirement that the district own a 100 percent interest in the property in order to obtain exemption. C 8/25/92.

490.0010 Joint Powers Agency. The Joint Exercise of Powers Act authorizes two or more public entities to enter into an agreement to exercise jointly any power common to them and specifically provides that a mutual water company can become a member of a joint powers agency under certain circumstances. However, there is no provision in the Joint Exercise of Powers Act which provides that a mutual water company is considered an exempt public entity when such a company becomes a member of a joint powers agency.

When a mutual water company owns taxable land located within its boundaries and the company is a member of a joint powers agency, such land is not exempt and remains subject to assessment. Likewise, when taxable privately-owned land located within the boundaries of a joint powers agency is to be developed by the joint powers agency, such land is also not exempt and remains subject to assessment. The mere creation of the joint powers agency does not transmute the character of the land from taxable property to exempt property. C 8/14/01. (2003–1).

490.0015 Located Outside Boundary. De-annexation of property by a city that places city-owned property once again outside the city's boundary returns the property to its former taxable status, and section 11 of article XIII of the California Constitution again applies. C 1/21/92. (Am. M99–1).

490.0016 Located Outside Boundary. A change in the boundary of a governmental entity is effective as of the date of recordation of the Certificate of Completion with the County Recorder, even though a statement of boundary change was never filed with the Secretary of State, State Board of Equalization or County Auditor. Technical errors in annexation/reorganization procedures will be ignored by the courts if there has been substantial compliance with the statutes, and the annexation and/or reorganization will usually be validated by the Legislature through validating acts so as to exempt property purchased by the governmental entity within the new boundary. C 10/4/96. (M99–1).

490.0030 Public Dedication of Roadway. Pursuant to Government Code Section 27281, property dedicated to public right of way becomes tax exempt

GOVERNMENT-OWNED PROPERTY (Contd.)

upon recording of the Certificate of Acceptance which has been witnessed by the appropriate government official. C 2/28/95.

490.0045 Public Facility Corporations. Legal entities created by governmental agencies are not themselves governmental agencies, and property owned by such an entity cannot be deemed to be owned by the agency that formed it unless there is specific legislation so providing. In some instances, it may be possible for such an entity to qualify for the welfare exemption under Revenue and Taxation Code section 231 if all of the requirements of that section are met. C 9/17/87; C 5/16/96. (Am. M99-1).

490.0060 Redevelopment Agency. A city redevelopment agency may own property which is exempt from property tax if the property is located within the city creating the agency. While such an agency may designate project areas within the city for redevelopment, these areas do not define the agency's boundaries; the city limits do. C 5/19/89.

490.0065 Stock Ownership. Even though a local government owns 100 percent of the stock of a corporation, property owned by the corporation is not eligible for exemption as property owned by a local government. A corporation is an entity legally distinct from its shareholders, who do not own the corporate property. C 12/11/96. (M99-1).

490.0080 Tribal-Owned Land. An Indian tribe holds fee title to property located outside the reservation, and the property is not held in trust by the federal government for that tribe. The property is used for tribal operations and health clinic services. The fact that Indian tribal governments may be treated as states for specified federal tax purposes does not establish that a tribe is to be treated as a state or local government with respect to state taxation. Thus, the property is not exempt as government-owned land under article XIII, section 3(a) of the California Constitution. C 7/22/2003. (2004-1).

493.0000 GRANDPARENT-GRANDCHILD TRANSFER

See Change in Ownership

Parent-Child Transfer

493.0080 Limited Liability Company. A transfer from grandparents to a limited liability company owned by their grandchildren does not qualify for the grandparent/grandchild exclusion from change in ownership. While legislation does look to the beneficial ownership of property held in trust to determine ownership and eligibility for exclusion, a different approach is taken with respect to transfers by and to limited liability companies. The latter are treated as separate and apart from their owners, and transfers between or among them are excluded only when the transfers result solely in changes in the manner of holding title to the properties transferred. C 2/26/97.

493.0115 Re-Affirmation of Deed. A "re-affirmation" of deed recorded after the effective date of the grandparent-grandchild exclusion does not negate an earlier transfer evidenced by a deed recorded before the effective date of the

GRANDPARENT-GRANDCHILD TRANSFER (Contd.)

exclusion; nor does it constitute a transfer under Revenue and Taxation Code section 60. Apart from a valid rescission or a rebuttal of the deed presumption, the date of a change in ownership cannot be “undone” or “invalidated.” C 10/27/98. (2003–1).

493.0120 **Son-in-Law.** The grandparent-grandchild exclusion from change in ownership is available when all of the parents of the eligible transferees who qualify as the “children” of the grandparents have died or, in the case of a son-in-law, divorced. Thus, the exclusion applies where the parent of the grandchildren has predeceased the grandparents and the former husband/son-in-law was divorced from the deceased child prior to her death.

If the parent of the grandchildren has divorced and later remarried, then her second husband, the grandchildren’s stepfather, would be the new son-in-law and, therefore, the “child of the grandparents.” In this case, the exclusion would not apply unless the stepfather was also deceased at the time of the transfer. C 2/26/97.

493.0123 **Step Transaction Doctrine.** The statement of legislative intent expressed in section 2 of Chapter 48 of the Statutes of 1987 specifies that the step transaction or substance-over-form doctrine shall not be applied to prevent the application of the parent-child exclusion. This statement of legislative intent is not applicable to transfers between grandparents and grandchildren because there was no grandparent-grandchild exclusion available at the time the statement was written. C 3/10/2000.

493.0125 **Surviving Son- or Daughter-in-Law.** The grandparent-grandchild exclusion from change in ownership is available when both of the parents (the middle generation) of the eligible transferees who are “children” of the grandparents for purposes of the exclusion have died. A “child” includes a surviving son-in-law or daughter-in-law if the marriage between the grandparents’ child and the in-law was terminated by death and the in-law has not remarried. Thus, the grandparent-grandchild exclusion will not apply if the surviving in-law/stepparent has not remarried. C 8/16/99. (2001–1).

493.0130 **Trusts.** As with transfers of property from a parent to a child, transfers from a grandparent to a grandchild can be excluded from change in ownership when accomplished through a trust and subtrusts, provided that the transfers are not made to a legal entity, such as a LLC, even if it is owned by the grandchild. The grandchild is an eligible transferee, if on the date of transfer both parents are deceased or one parent is deceased and the other no longer qualifies as a “child of the grandparents” because of a divorce. C 2/26/97. (M99–1).

495.0000 GROWING CROPS EXEMPTION

*See Business Inventory Exemption
Timber Yield Tax*

495.0001 Plants.

1. The exemption of “growing crops” provided for in section 3 of article XIII of the California Constitution extends to those plants which require an annual planting or sowing, or an annual harvesting. Where a specie of plant must be treated as an annual because of climatic conditions or the physical characteristics of the plant, it is a “growing crop” while growing on the grower’s lands even though such plant is technically classified botanically as a perennial.

2. The exemption is not limited to plants which produce food or fiber for human consumption or use but extends to certain ornamental plants. The term “growing crops” does not, however, apply to ornamental plants grown by a nursery for sale as living plants, i.e., for transplanting by the customer. An ornamental may qualify if it is grown for its products, such as cut flowers or seeds, if it is not grown for sale as a living plant and it meets the test described in above.

3. The exemption does not apply to nursery plants grown for sale, even though such plants as tomatoes become exempt in the fields of farmers who buy the plants and grow them for the purpose of harvesting tomatoes.

4. Cultivated turf grasses which are raised for sale as lawn are perennials and, therefore, are not “growing crops” within the meaning of section 1 of article XIII of the California Constitution. Revenue and Taxation Code Section 202.1 is, therefore, invalid. Such grasses are personal property and should be taxed in the same way as other nursery plants grown for sale and transplanting. The annual destruction of the root stock of perennial grasses or other plants is not the deciding factor in determining whether the plant is an annual or a perennial.

5. As indicated in 2, 3, and 4, above, nursery plants grown for sale are personal property whether they are grown in the ground or in raised beds or containers. Plants which are not grown for sale and transplanting but are grown for their products are to be classified as land if grown in the ground or in beds where the soil is in direct contact with or by outward appearance is in contact with the underlying land, whereas plants raised in containers or in beds elevated above the ground are to be classified as personal property for purposes of ad valorem property taxation.

6. Where land used to grow perennial plants is assessed on the basis of a higher and better use, it would be improper to add value because of the presence of perennial plants. If, however, nursery use is the highest and best use of the property, or the property is in a state of transition from nursery farm use to urban use, then the value of perennial plants may properly be reflected in the value of the land, whether the comparative sales approach or the income approach, or a combination of both, is utilized by the assessor. OAG 11/7/74 (No. CV 74-68, Vol. 57, p. 506).

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500.0000 HISTORICAL PROPERTY

See Land Use Restrictions

500.0005 Change in Ownership/New Construction. The value of an historical property for annual assessment purposes is the lowest of the base year value factored for inflation, the current market value, or the value determined pursuant to Revenue and Taxation Code section 439.2. In determining base year values, changes in ownership and new construction values must be taken into account in order to make the necessary comparison of values. C 2/13/2001. (M99-1; Am. 2002-1).

500.0008 Conservation Easement. The valuation standards of Revenue and Taxation Code section 439.2 may only be applied if the historical property contracts setting forth an enforceable restriction are signed, accepted and recorded on or before the lien date for the fiscal year in which the valuation would apply. Since the requirements for a conservation easement based on historical factors are not as extensive as the requirements for an historical property contract, the fact that a conservation easement was recorded does not serve to meet the requirements of Revenue and Taxation Code section 439.4. This is true even though conservation easements based on historical factors are valued pursuant to Revenue and Taxation Code section 402.1 once the conservation easement is recorded. C 9/21/95. (2000-1).

500.0030 New Construction. Revenue and Taxation Code section 439.1 specifies that “restricted historical property” that qualifies for restricted valuation under section 439.2 means qualified historical property under Government Code section 50280.1 subject to a historical property contract. Under section 50280.1, a “qualified historical property” is privately owned property which is not exempt from taxation and is listed either in the National Register of Historic Places or in any local official register of historical or architecturally significant sites or is located in a registered historic district. The subject property was described in the historical property contract as “a building, structure, object, site or district as defined in National Register Bulletin 15” under the governing local ordinance. Section IV of the National Register Bulletin 15 specifies that buildings eligible for the National Register must include all their basic structural elements. A newly constructed building, such as a garage, that does not include the basic structural elements of an existing historical building does not qualify as enforceably restricted historical property subject to valuation under Revenue and Taxation Code section 439.2. C 8/3/2004. (2005-2).

500.0040 Supplemental Assessments. Revenue and Taxation Code section 50 requires county assessors to establish new base year values for enforceably restricted historical property upon a change in ownership. However, the establishment of those new base year values merely enables the assessor to perform the three-way value comparison prescribed by Revenue and Taxation Code section 439.2(d) and to calculate the assessed values of historical property should the Mills Act contract enter nonrenewal status (section 439.3). Since the assessments of enforceably restricted historical properties are governed by article

HISTORICAL PROPERTY (Contd.)

XIII, section 8 of the California Constitution, Revenue and Taxation Code section 75.14 precludes assessors from enrolling supplemental assessments for enforceably restricted historical properties upon a change in ownership. C 11/13/2003. (2004–1).

500.0050 **Valuation.** Historical properties are valued pursuant to Article 1.9 (commencing with section 439) of Chapter 3 of Part 2 of the Revenue and Taxation Code. When restrictions are cancelled or terminated by nonrenewal, the full cash value is the taxable value that would have applied to a property had it not been restricted. In most cases, this will be the 1975 base year value (appropriately factored) or a subsequent base year value (appropriately factored), should the property change ownership. The exception occurs when the current market value is less than the factored base year market value. In this instance, the current market value will be used. LTA 10/19/79 (No. 79/187).

500.0051 **Valuation.** A property that qualifies as an historical property as defined in Government Code section 50280.1 and that is subject to an historical property contract pursuant to other specified sections of that code is “enforceably restricted” and must be valued using the capitalization of income method specified in Revenue and Taxation Code sections 439.2 or 439.3. The historical property contract must be signed, accepted and recorded on or before the lien date of the fiscal year for which the valuation would apply. C 9/19/88. (M99–2).

505.0000 HOMEOWNERS’ EXEMPTION

See Mobilehome

505.0001 Claims.

1. An unsigned exemption claim may not be allowed.
2. The exemption may be denied to any owner-occupant refusing to disclose his social security number on the exemption claim. LTA 3/23/82 (No. 82/50).

505.0002 Claims.

1. If a husband and wife occupy a home that is wholly owned by either spouse, the social security numbers of both must be listed on the claim form, but only the owner may sign the claim.
2. If two or more related or unrelated coowner-occupants of a home file a claim, all names and social security numbers may be listed on the claim form; however, only one name and social security number must be reported to the Board, unless the coowner is a spouse, in which case the spouse’s social security number must also be reported.
3. The signature of one spouse who is a co-owning occupant with the other spouse will be valid for both spouses so long as one or both of them continues to reside on the property as their principal place of residence. Thus, if either spouse dies, the claim remains in effect during the life of the remaining owner-occupant

HOMEOWNERS' EXEMPTION (Contd.)

spouse. Property Tax Rule 135(a)(3) does, however, permit the assessor to require the refile of the claim by the non-signing spouse if the spouse who signed the claim has died.

4. If a claim has the social security numbers of both spouses, but only the signature of one spouse, and they separate but remain legally married, the claim will remain in effect during the occupancy of the property by one spouse as a principal place of residence.

5. If a claim has the social security numbers of both spouses, but only the signature of one spouse, and they divorce, the claim will no longer be valid if the signing spouse moves. Unless and until the non-signing spouse files a claim for the exemption and meets all of the requirements for exemption, the property would no longer receive the exemption. C 11/27/2001. (2003-1).

505.0005 Condominiums.

1. The exemption is allowable where an owner's deed grants to him a percentage interest in the property and the right to the exclusive occupancy of a particular apartment even though the interest is not separately assessed, as it should be.

2. A leasehold or subleasehold condominium does not qualify for the exemption.

3. The exemption may be allowed on a condominium where a portion of the improvement is owned in fee but the land is leased. LTA 3/23/82 (No. 82/50).

505.0010 Conservator or Guardian. The exemption may be claimed by the conservator or guardian of a homeowner eligible for the exemption but incompetent to make the claim. C 2/10/69; LTA 3/23/82 (No. 82/50).

505.0015 Cooperative Mobilehome Park. The occupants of a cooperative mobilehome park are entitled to the exemption on their respective portions of the land occupied as their principal places of residence. The corporation must annually file the prescribed Form SBE-ASD 266D, and each shareholder occupying a space as a principal place of residence must file a homeowners' claim for the land on which his place of abode is situated. The exemption is to be allowed against the market value of each site. C 3/7/78.

505.0017 Corporate Ownership. Property eligible for the homeowners' exemption becomes ineligible when it is transferred by a husband and wife as joint tenants to a corporation which they own. If their ownership interests remain unchanged after the transfer, Revenue and Taxation Code Section 62(a)(2) would exclude the transfer from change in ownership, but that exclusion is separate and apart from exemption considerations and would not enable them to continue receiving the homeowners' exemption. C 12/29/80.

505.0019 Disaster Impact. Temporary absence from a dwelling for repairs made necessary by a natural disaster, such as a flood or fire, will not result in the loss of the homeowners' exemption, provided the owners demonstrates that he or she returned to the dwelling when possible to do so. When a dwelling has been totally destroyed, however, the exemption is not applicable until the structure has

HOMEOWNERS' EXEMPTION (Contd.)

been replaced and is occupied as a dwelling, except as provided in subdivisions (d), (e), and (f) of Revenue and Taxation Code section 218. There is no federal or state law that exempts privately-owned dwellings in the course of construction from property taxation. C 3/20/92; LTA 11/24/2004 (No. 2004/069). (M99–1; Am. 2005–2).

505.0020 Double Exemption Claims. A husband and wife may not claim two exemptions for separately located houses, each of which is occupied on the lien date by one of them. Where a husband and wife have more than one residence, their principal residence is the residence at the place at which they intend to live permanently. C 7/25/79.

505.0025 Equitable Title Holder. Under a contractual agreement for sale and purchase of real property, an equitable owner of real property may qualify as an owner for purposes of receiving the exemption, assuming all the requirements therefor are met. C 9/21/78.

505.0030 Escape Assessments. Where property sold on or after March 1 but before July 2 has improperly received the exemption, an escape assessment should be entered on the secured roll but interest and penalties should be forgiven. C 7/24/79.

505.0035 Escrow, Recordation, Title.

1. The exemption may be claimed for a property which is in escrow on the lien date if the purchaser has occupied it on February 28 and all conditions precedent to a binding contract of sale have been fulfilled.

2. The exemption is allowable for property held in the name of a business if the claimant is the sole owner of the business and all other conditions necessary for the exemption are met.

3. The exemption is not allowable for property held in the name of a corporation.

4. A person whose interest in property is evidenced by a “deposit receipt” is not eligible for the exemption. LTA 3/23/82 (No. 82/50).

505.0040 Estates, Trusts, Power of Attorney, Guardian.

1. An occupant of property who owns a life estate therein may receive the exemption. An occupant remainderman (the person acquiring the property after the death of the life estate owner) may not receive the exemption while a life estate interest exists.

2. The exemption is allowable to an occupant who has a life estate in his home but it does not extend to land not included in the life estate.

3. The exemption is allowable to an occupant who is a trustor under a revocable “living trust.”

4. The exemption is allowable to an occupant who is a trustor under an irrevocable trust.

5. The exemption is allowable to an occupant who is the beneficiary of a trust even though legal title is held in trust by a third party.

HOMEOWNERS' EXEMPTION (Contd.)

6. A spouse, inheriting and occupying property as his/her principal place of residence may receive the exemption even though the property is in probate.

7. The exemption is not automatically extended to a joint tenant who is not a widow or widower. A new exemption claim must be filed by the survivor.

8. A person holding a power of attorney may execute the exemption claim form for a qualified owner-occupant.

9. The conservator or guardian of a qualified owner-occupant may execute the exemption claim where the owner-occupant is a minor or an incompetent. LTA 3/23/82 (No. 82/50).

505.0050 Executor. The exemption may be claimed by the executor of an estate when the deceased owned and occupied his dwelling on March 1 of the year for which exemption is claimed. It is immaterial whether the dwelling is presently occupied or that the dwelling was willed to a specified individual. C 2/10/69; LTA 3/23/82 (No. 82/50).

505.0055 Failure to File. The homeowner has the ultimate responsibility to file the claim for exemption. Failure to receive the claim form shall not excuse a homeowner from timely filing of a claim. C 5/31/78; C 9/18/78.

505.0060 Failure to Mail Claim. If a claim for exemption was not mailed to a person acquiring and recording title as required by Revenue and Taxation Code section 255.3, mailing and receipt of the tax bill disclosing that no exemption has been allowed satisfies the notice requirement of section 255.3, and the homeowner may file a claim for exemption on or before December 1 and receive the entire exemption rather than partial exemption. Failure to claim the exemption on or before December 1 results in a waiver of the exemption. C 11/3/82; C 8/15/97. (Am. M99-1).

505.0063 Limited Liability Company. For property tax exemption law purposes, limited liability companies are, like corporations, separate entities. There is no authority for disregarding a limited liability company's separate entity status for purposes of ownership of property and determining eligibility for the homeowners' exemption. Thus, a claim for exemption should not be allowed for property owned by a limited liability company. C 11/27/2001. (2003-1).

505.0065 Mobilehome. A mobilehome owned by its occupant is eligible for the homeowners' exemption if it is otherwise subject to property tax, but the leased land on which it is situated is not, even if the lease is for a period of 83 years. While the execution of a lease for 35 years or more is cause for a reappraisal for change in ownership purposes, a lessee is not an owner for exemption purposes. C 3/6/89.

505.0070 Occupied by the Owner. Property is not "occupied by the owner" for purposes of claiming the exemption if it is rented to another person on the lien date. Property occupied by the owner on the lien date but thereafter rented during a temporary absence can remain eligible for the exemption. C 6/19/78.

HOMEOWNERS' EXEMPTION (Contd.)

505.0072 Personal Lifetime Right of Occupancy. Father and Mother transferred their home to their son but retained the right to continue living in the home. A personal and exclusive lifetime right to occupy the home is equivalent to a life estate if that right provides that the transferors are responsible for mortgage payments, taxes, utilities, maintenance and other expenses associated with the upkeep of the home. Under such terms, the property remains eligible for the homeowners' exemption. C 5/13/2005. (2008–1).

505.0074 Possessory Interest—Leasehold Estate. Homeowners who sold their residence to a redevelopment agency and immediately leased it back acquired a taxable possessory interest in the residence. As a leasehold estate, the homeowners' interest in the property is not eligible for the exemption. C 3/10/98. (M99–1).

505.0075 Possessory Interest Life Estate. The exemption is allowable to an occupant of property owning a life estate interest in public tax-exempt property. C 8/15/80.

505.0078 Principal Residence. Whether a dwelling located in California is a person's principal place of residence is a question of fact. To qualify for the exemption, a dwelling must be the person's true, fixed and permanent home and principal establishment to which he/she, whenever absent, intends to return. In-state presence, vehicle registration, voter registration, bank accounts, and state income tax filings are among the matters to be considered in determining residency, which, for exemption purposes, is equivalent to domicile. C 11/20/84.

505.0080 Probate Homestead. The exemption is allowable to an occupant of property pursuant to an order of probate homestead, which conveys the exclusive use, possession, and enjoyment of the property much the same as an estate for life. C 6/18/82.

505.0085 Property Encumbered by a Trust. The exemption is available for property encumbered by a trust agreement where:

1. A deed absolute on its face is subject to an unrecorded trust agreement between a grantor and a grantee which grants a life estate and a right of revocation in the grantor; or
2. The trustor has created a revocable living trust and presently occupies the dwelling; or
3. The trustor has created an irrevocable trust and presently occupies the dwelling; or
4. The property is occupied by a beneficiary of the trust even though legal title may be held in trust by a bank. C 4/21/78.

505.0090 Rented Mobilehome on Owned Land. The exemption is not available to a person occupying a rented mobilehome on land he owns and with respect to which mobilehome he has claimed a renter's credit. C 6/16/78.

HOMEOWNERS' EXEMPTION (Contd.)

505.0095 **Restoration of Exemption.** An exemption terminated in error may be restored to the roll and the homeowner may claim a refund and obtain a reduction in taxes as the result of the restoration of the exemption where:

1. A valid exemption claim has been on file;
2. There has been no further verification upon receipt of a returned Advice of Termination notice;
3. The homeowner has not cancelled the exemption; and

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HOMEOWNERS' EXEMPTION (Contd.)

4. The homeowner can establish his eligibility for exemption for the year or years in question. C 5/30/78; C 11/3/78.

505.0098 Roll Correction. Revenue and Taxation Code section 4831 permits corrections of a clerical or formal nature so that the roll actually reflects the intent of the assessor when compiling it. The section cannot be used to allow a homeowners' exemption where the assessor failed to mail a claim form to the homeowner and the homeowner did not file a claim for the exemption. C 8/15/97. (2000-1).

505.0100 Social Security Numbers. Although federal law prohibits any state or local governmental entity from denying to any person any right, benefit, or privilege provided by law because of such person's refusal to disclose his or her social security number (5 U.S.C. § 552a), it permits states and local governmental entities to continue to require such information if they had previously maintained a system of records employing the numbers pursuant to a statute or regulation adopted prior to December 31, 1974. Record systems maintained by counties for verifying the eligibilities of claimants for the exemption under Revenue and Taxation Code Section 218.5 and Property Tax Rule 135 are within this exception, and assessors may continue to require disclosure of social security numbers in conjunction with claims for the exemption. LTA 2/25/75 (No. 75/33).

505.0101 Social Security Numbers. Failure to disclose social security numbers in conjunction with a claim for exemption will result in disallowance of the exemption. C 4/17/78; C 11/14/78.

505.0105 Temporary Absence.

1. A temporary absence from one's principal residence does not disqualify one for the exemption so long as the property is not leased or rented on the lien date. An absence of more than one year would raise considerable doubt that a residence is a principal residence.

2. Hospitalization in a convalescent home does not disqualify one for the exemption if the claimant expects to return to the dwelling and the property is not leased or rented.

3. An absence for training or employment or a temporary exchange of dwellings with no rentals paid does not disqualify one for the exemption. LTA 3/23/82 (No. 82/50).

505.0110 Trailer Coach. The exemption applies to a trailer coach and parcel on which it is located if owner-occupied on the lien date and listed on the assessment roll, and to appurtenant structures, e.g., cabana, storage shed, etc., owned by the trailer coach owner. Where a person resides in a licensed trailer coach on his own land, the exemption applies only to the parcel on which the trailer coach is located. LTA 3/23/82 (No. 82/50).

505.0115 Transferability. The exemption is not transferable from one property owned and occupied by the claimant on the lien date to another property to which the claimant has subsequently moved. LTA 3/23/82 (No. 82/50).

HOMEOWNERS' EXEMPTION (Contd.)

505.0120 Trust. A dwelling placed in trust by a husband and wife, the husband being the trustee and the wife the trust beneficiary, and occupied on the lien date as their principal residence, is eligible for the exemption.

A dwelling placed in trust, a bank being the trustee under an intervivos or testamentary trust, and occupied by the trust beneficiary on the lien date as his principal residence, is eligible for the exemption. The bank, on behalf of the trust beneficiary, could claim the exemption.

A life beneficiary under a trust instrument is eligible for the exemption, if the beneficiary is occupying the dwelling on the lien date as his principal residence. C 2/10/69; C 10/23/70; LTA 3/23/82 (No. 82/50).

505.0130 Types of Property. An owner-occupant of any of the following types of property may qualify for the exemption with respect to that portion of the property occupied:

1. A rooming house.
2. A duplex. If owned by a two-member partnership where each side is a principal residence, each side would qualify.
3. A multiple-family residential property.
4. A motel.
5. An apartment in a structure owned by nonprofit corporation or cooperative housing corporation. LTA 3/23/82 (No. 82/50).

505.0135 Under Construction. The exemption should not be allowed on a dwelling under construction if the owner lives elsewhere and plans to move into it when completed. However, if the owner actually occupies the dwelling as his principal place of residence, he may receive the exemption. If the owner does not occupy the dwelling under construction but lives in a trailer coach or other abode on the property, no part of the exemption may be applied to the dwelling under construction. The exemption may be applied to the abode or to the land on which the abode is located. If the owner is occupying an existing dwelling and is remodeling or adding to it, the exemption should be allowed on the assessed value of the entire property. LTA 3/23/82 (No. 82/50).

505.0140 Vessel. While Revenue and Taxation Code section 218 permits the application of the homeowners' exemption to personal property, there is nothing in its language to indicate that a vessel qualified for the documented vessel exemption contained in Revenue and Taxation Code section 227 may qualify for both exemptions at the same time. The vessel owner must elect and properly claim one of the exemptions. C 4/18/77. (M99–1).

510.0000 HOUSEBOATS

510.0001 Classification. Houseboats are classifiable generally as vessels and are assessable as personal property. C 11/21/80.

515.0000 HOUSEHOLD FURNISHINGS

515.0001 Community Associations. A nonprofit corporation formed by owners of a planned residential development may qualify as a “householder” and hence, its personal property used in and around its clubhouse is eligible for the exemption. LTA 5/2/80 (No. 80/76).

515.0002 Community Associations. Lake Forest Community Association v. Orange County (1978) 86 Cal.App.3d 394, held that furnishings owned by a community association and used in its clubhouse were eligible for the household furnishings exemption in Revenue and Taxation Code section 224. However, personalty owned by a property owners’ association and made available to the general public is personalty held or used in connection with a trade, profession, or business and, therefore, is excluded from that exemption. C 4/4/83. (2006–1).

515.0005 Religious Organizations. Personal property held by a religious organization and used to furnish rectories, convents, and caretakers’ quarters used by priests, nuns, and caretakers is held for household use or purposes and is eligible for the exemption. C 6/20/84.

515.0009 Rented Residences. Furnishings used in a personal residence that is rented during the summer each year are assessable under general assessment provisions. Revenue and Taxation Code section 224 specifically states that the phrase “personal effects, household furnishings and pets” does not include “personalty held or used in connection with a trade, profession or business.” C 11/2/2001. (2003–1).

515.0010 Residential Care Facilities. Revenue and Taxation Code section 224 provides that the personal effects exemption does not apply to property held or used in connection with a trade, profession, or business. Therefore, assessment of personal property owned by the licensee of a residential care facility and used in connection with the facility is an assessment to which other family dwellings are subject. However, the fact that a licensee operates a residential care facility out of his or her own home should not preclude application of the exemption for personal effects and household furnishings held for the licensee’s own personal use, such as personal bedroom furnishings. C 12/4/2000. (2002–1).

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520.0000 IMPROVEMENTS VALUATION

See Personal Property

520.0010 Docks and Docking Rights. Docks on a private lake can be personalty or realty depending on the manner of their affixation. An assigned right to use a dock constitutes an easement to make use of the lake and is appurtenant to the particular land which is serviced by the particular dock. Unassigned docking rights constitute easements in gross. The docking rights should be assessed as real property whether the docks are assessed as personalty or realty. C 5/17/83.

520.0040 Service Station Fixtures. Property tax law classifies a fixture as a real property improvement. Although a structure is also a real property improvement, several reasons necessitate separately identifying fixtures from structures:

- (1) Differing definitions of “new construction.”
- (2) Fixtures are their own “appraisal unit” when measuring declines in value.
- (3) Fixtures are handled differently for supplemental roll purposes.

Thus, real property improvements must be identified, segregated, and properly categorized as “fixtures” consistent with Revenue and Taxation Code Section 105 and Property Tax Rule 122.5(a)(1), or as structures.

Since some service station improvements have been or will be replaced, the question is whether replacement constitutes new construction. Regarding new construction, Property Tax Rule 463(c) defines “fixture” as “an improvement whose use or purpose directly applies to or augments the process or function of a trade, industry, or profession.” Service station improvements such as tanks, pumps, hoists, and air/water wells are examples of improvements that directly augment the function of the service station trade. As such, said improvements are properly categorized as fixtures, and replacement constitutes new construction in light of Revenue and Taxation Code Section 70 and Property Tax Rule 463(b)(5). LTA 3/18/88 (No. 88/24); LTA 5/23/88 (No. 88/40).

525.0000 INDIANS AND INDIAN LANDS

See Mobilehome

Timber Yield Tax

Tribal Housing Exemption

525.0001 Bingo Management Agreement. A management agreement whereby a non-Indian is to conduct a bingo operation on federal land held in trust for Indians can result in a possessory interest in the property subject to property taxation. Such an interest can be created and exist without the approval of the Secretary of the Interior, since it is possession and valuable use that is crucial in determining the existence of a taxable possessory interest, not whether the instrument under which possession and valuable use are exercised is valid. C 3/14/85.

525.0002 Bingo Management Agreement. A business manager/operator of an Indian tribe’s bingo operation on Indian land has a taxable possessory interest in the land and improvements used in conjunction therewith. C 5/7/87; C 1/28/88.

INDIANS AND INDIAN LANDS (Contd.)

525.0003 Bingo Management Agreement. An agreement between an Indian tribe and a business concern hiring the latter as a “management consultant” to oversee a bingo game operation on tribal land results in a taxable possessory interest if the agreement provides the “consultant” the right to use Indian property on a sufficiently exclusive, durable and independent basis and results in a private benefit, i.e., an opportunity to make a profit to the “consultant”. The terms of the agreement, not the label assigned to the person or firm hired, determine whether or not a possessory interest has been created. C 7/27/93. (Am. M99-1).

525.0005 Developer Of Indian Lands. A master lessee-developer of Indian lands has a taxable possessory interest therein, even though it may thereafter sublease some or all of its interest. C 4/14/81.

525.0006 Developer of Indian Lands. Improvements constructed on an Indian reservation and owned by a partnership (general or limited) to be used for bingo are assessable unless the partnership qualifies as an “Indian organization” i.e., one in which all partners are Indians. If one partner is a non-Indian, the partnership is not an “Indian organization.” C 11/8/84.

525.0008 Equipment. Business equipment that is owned by a Native American and that has situs on the reservation is not assessable by the county assessor even though the property is used off the reservation. Because the reservation is comprised of Indian lands held in trust by the federal government, such that the situs of the property is on tax-exempt federal land, the property is not locally assessable. C 6/24/2002. (2004-1).

525.0008.005 Equipment. Business equipment that is leased to a tribe and used on the reservation is not assessable to the Indian tribe by the county assessor. The state is pre-empted by federal law from imposing such a tax on Indian lessees of leased equipment located on Indian lands. However, the leased equipment may be assessable to the lessor provided that the tax would not impose a burden on tribal activity that is subject to comprehensive federal regulation. C 8/11/2003. (2004-1).

525.0009 Federal Tax Exemption Status. Internal Revenue Code section 17871 and section 305.7871-1 of the Income Tax Regulations provide that Indian tribal governments (or subdivisions thereof) will be treated as states for specified federal tax purposes. However, the recognition as an Indian tribal government does not necessarily establish that property of the tribal government qualifies for a particular tax benefit. Furthermore, there is no evidence that Congress intended to treat Indian tribal governments as a state or local government with respect to state taxation. Thus, the fact that an Indian tribal government may be treated as a state for certain federal tax purposes, it does not give rise to any state tax exemption for land not within a reservation and not held in trust. Such property does not qualify for a California property tax exemption and is not otherwise immune to such taxation. C 8/5/2003. (2004-1).

INDIANS AND INDIAN LANDS (Contd.)

525.0010 Government Lands. Land and improvements held by the government in trust for Indians are not subject to property taxation, and Indians residing thereupon are similarly not subject to such taxation. C 4/14/81; C 7/10/2003. (Am. 2004–1).

525.0011 Housing Authority. The fact that real property is owned by an Indian housing authority is not sufficient, in and of itself, to exempt the property from taxation. Such property will be either immune or exempt from property taxation only if there is a specific reason for such immunity or exemption; for example, the property is held by the federal government in trust for an Indian tribe or the property has been exempted under the welfare exemption. C 11/24/98. (2000–1).

525.0012 Indian Lessees. Property which is not located on an Indian reservation, is owned by non-Indians, and is leased to a tribal health organization to provide health care services to Indians is not immune or exempt from property taxation. The local government's interest in taxation of such property outweighs federal and tribal interests in self-determination. Thus, the local government's jurisdiction to tax property is not preempted by federal and tribal jurisdiction over Indian affairs. A tribal health organization is not a federal instrumentality whose owned property is immune from state and local taxation; and, even if it were a federal instrumentality, property which it leases would not be immune. With regard to the welfare exemption and eligibility therefor, in cases where property is owned by one entity but operated by another entity, both entities must file a claim for and qualify for the welfare exemption. C 4/14/97. (M99–1).

525.0013 Indian Owned Land. *Confederated Tribes and Bands of the Yakama Nation v. Yakima County, et al.* (1990) 903 F.2d 1027 (later 502 U.S. 251), holds that 25 U.S.C. Sec. 349 manifests congressional intent to permit state and/or local property taxation of fee patented lands owned by enrolled tribal members and located within an Indian reservation. C 5/7/90; C 5/22/90; C 2/18/2000; C 7/10/2003. (Am. 2000–2; 2004–1).

525.0014 Indian Owned Land. Indian tribal-owned lands not within a reservation and not held in trust for Indians by the United States are subject to nondiscriminatory taxes, including local property taxes. C 5/27/92; C 2/18/2000. (Am. 2000–2).

525.0015 Indian Tenant of Indian Housing Authority. The possessory interest of an Indian tenant residing in a unit of an Indian Housing Authority project is exempt from property taxation. C 10/22/76; C 9/20/79.

525.0016 Leases of Tribal Lands to Non-Indians. Until there is an appellate level decision holding that leases of tribal lands to non-Indians are governed by federal law only or that assessments of possessory interests to non-Indian lessees infringe upon the tribal right of self-government, such interests should be assessed. Authority for such assessments is found in section 1 of article XIII of the California Constitution, Revenue and Taxation Code Sections 104, 107, and 201, and cases such as *The Agua Caliente Band of Mission Indians v. Riverside*

INDIANS AND INDIAN LANDS (Contd.)

County (1971) 442 F.2d 1184, and *The Fort Mojave Tribe v. San Bernardino County* (1976) 543 F.2d 1253. C 5/8/92.

525.0017 Leases to Non-Indians. If a property is taken in trust by the federal government for a member of an Indian tribe, the property will not be subject to property taxation and the Indian tribe member's use of the property will not constitute a taxable possessory interest. However, if the property is taken in trust by the federal government and thereafter used by a non-Indian lessee, then a taxable possessory interest may be imposed upon such subsequent use. C 6/24/99. (2000–1).

525.0018 Off-Reservation Indian Housing. The general rule is that, absent express law to the contrary, Indians going beyond reservation boundaries are subject to non-discriminatory state laws, including tax laws that are applicable to all citizens of the state. Thus, off-reservation, nonexempt rental housing units should not be valued or taxed differently merely because of the presence of Indian tenants. C 1/27/2001. (2002–1).

525.0019 Partnerships. The property of a partnership is not immune from taxation merely because the majority partner is an Indian. Under California property tax law, it is the partnership as an entity which holds title to the partnership assets (property), which partnership is a separate "person" and must establish its own immunity (if any) distinct from that (if any) of its partners. C 9/1/95.

525.0020 Possessory Interest Tax. While a possessory interest tax is not preempted by the federal Indian leasing statute, the sovereignty analysis in *Gila River Indian Community v. Waddell* (1996) 91 F. 3d 1232 and in *Segundo v. City of Rancho Mirage* (1987) 813 F. 2d 1387 is nevertheless instructive and relevant to the application of a possessory interest tax to a non-Indian residential lessee of Indian land. Because of the concern for Indian sovereignty and economic self-sufficiency, automatically imposing the tax on any non-Indian possessory interest in Indian land is no more appropriate than automatic refusal to impose the tax on the grounds of preemption. Consideration should always be given to factors such as the role, if any, of the tribe and its members in generating value for the leasing operation, the importance of the revenues produced by the leases to the economic self-sufficiency of the tribe, and the importance of state and county services, such as law enforcement and the judicial system. C 11/9/2000. (2002–1).

525.0025 Tribal Tax on State-Assessed Utility Property on Indian Land. Where property owned and used by a public utility traverses Indian land, that property may be assessed by both the State Board of Equalization for local property taxation and be subject to a property tax imposed by the Indian tribe without violating the prohibition against double taxation. Double taxation occurs only when two taxes of the same character are imposed on the same property, for the same purpose, by the same taxing authority, within the same jurisdiction and during the same taxing period. C 1/9/98. (M99–2).

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525.0030 **Trust Patent.** Land held by an Indian under a trust patent granted by the government is not subject to property taxation. C 3/31/78; C 7/10/2003. (Am. M99–1; Am. 2004–1).

530.0000 INSURANCE COMPANIES

See Personal Property

530.0001 **Fraternal Benefit Societies.** Insurance Code Section 10993 declares fraternal benefit societies to be charitable and benevolent institutions and exempts their funds from all state and local taxes except taxes on their real property and office equipment. Such real property and office equipment are subject to local assessment.

The term “office equipment” includes office machinery and equipment, supplies, data processing equipment, and all other property typically found in a business office. LTA 11/16/79 (No. 79/198).

530.0050 **Personal Property of Title Companies.** To be eligible for the exemption of personal property provided to insurers by section 28 of article XIII of the California Constitution, a title company must establish to the satisfaction of the Department of Insurance that it is an insurance company qualified to do business in California. The burden of proof is on the company claiming the exemption. The Department of Insurance maintains a listing of the names of insurance companies authorized to do business in California. The assessor does not have to make an independent determination, but may rely on the list maintained by the Department of Insurance. C 6/14/2001. (2002–1).

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535.0000 LAND USE RESTRICTIONS

See Rental Housing Exemption

535.0001 Assessment. Revenue and Taxation Code section 402.1 is applicable when valuing the privately owned fee interest of a landowner in property dedicated to use as low income housing by a recorded agreement between it and a governmental housing authority. C 1/13/84.

535.0002 Assessment. Revenue and Taxation Code section 402.1 is applicable when valuing a development wherein certain units are restricted to low-income rentals by a recorded agreement between the developer and the State Tax Credit Allocation Committee. C 11/2/94.

535.0003 Bankruptcy Code—Redemption. The one-year right to redeem property sold pursuant to the Bankruptcy Code does not constitute a land use restriction under Revenue and Taxation Code section 402.1. C 9/4/92.

535.0004 Caltrans—Surplus Residential Housing. Surplus single-family residential properties sold for less than market value by Caltrans to qualified buyers pursuant to its *Right to Purchase Agreement* imposing terms, conditions, and restrictions to assure that such housing would remain available to persons of low or moderate incomes were subject to land use restrictions within the meaning of Revenue and Taxation Code section 402.1. LTA 7/7/81 (No. 81/74).

535.0005 City Ordinance or Contract—Affordable Housing. In assessing townhomes purchased at a discount by low to moderate income individuals, as defined in a city affordability schedule, and on which the city imposed resale controls designed to maintain the availability of affordable housing, the assessor should recognize these limitations as enforceable restrictions under Revenue and Taxation Code section 402.1 similar to those discussed in LTA 7/7/81 (No. 81/74); C 12/13/93. (Am. 2006–2).

535.0006 City Regulatory Agreement—Affordable Housing. A city redevelopment agency, with assistance from the City, increases the supply of affordable housing within its redevelopment area by requiring developers seeking approval to build housing projects and sell a portion of the dwelling units (affordable units) to low or moderate income purchasers (purchasers).

In order to acquire the property, the purchaser must obtain a first mortgage from a private lender, the amount of which is tied to the median-area income, the purchaser's income, and current interest rates (first mortgage). Additionally, prior to closing, each purchaser of an affordable unit must enter into a recorded regulatory agreement with the City that requires that the purchaser execute a promissory note and second trust deed, referred to as a silent second mortgage, under which the City may require payment after a period of years.

The recorded regulatory Agreement entered into by the City and the purchaser constitutes an enforceable government restriction under section 402.1. Thus, in the absence of evidence of comparable sales of similarly restricted property, the value of the affordable units for property tax purposes, under section 110(b), is

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their purchase price, which in each case may be estimated by adding the sum of the down payment and the face amount of the first mortgage to the assessor's estimate of the present economic value of the silent second. C 2/8/2007; C 4/10/2007. (2008–1).

535.0010 Conservation Easements. Conservation easements placed upon properties by government through zoning, contract, or agreement are land use restrictions within the meaning of Revenue and Taxation Code section 402.1. C 6/7/84.

535.0011 Conservation Easements. The conveyance of an “Agricultural Conservation Easement” to a California nonprofit, public benefit corporation for the purpose of allowing the corporation to hold the property in trust perpetually as agricultural land does not constitute a restriction to be taken into account when valuing the property to which the easement applies for property tax purposes. However, the granting of such an easement to a governmental agency would constitute a restriction of the type referred to by Revenue and Taxation Code section 402.1. C 8/15/89.

Note: Stats. 1993, Ch. 1002, in effect January 1, 1994, added subdivision (a)(8) to section 402.1 which provides that an enforceable restriction to which the use of land may be subjected and which an assessor must consider when assessing the land includes a recorded conservation easement, as described in section 815.1 of the Civil Code, granted in favor of a nonprofit corporation organized pursuant to section 501(c)(3) of the Internal Revenue Code that has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use.

535.0015 Dairy Land and Improvements. Restrictions placed upon land and improvements which make up a milk production facility by government through contracts for the buy-out of the facility and dairy cows are land use restrictions within the meaning of Revenue and Taxation Code section 402.1. LTA 7/7/87 (No. 87/49).

535.0016 Electrical Generating Qualifying Facilities. A contract executed between the owner/operator of a “Qualifying Facility” and an electric utility whereby the former sells electrical energy to the latter pursuant to a “standard offer contract” does not result in land use restriction contemplated by Revenue and Taxation Code section 402.1. Any zoning restriction on the use of the “Qualifying Facility” property, however, may be taken into account under section 402.1 when valuing “Qualifying Facility” property. C 3/28/90. (M99–1).

535.0018 Federal Housing Projects. Rental limitations and other limitations and restrictions imposed upon owners of HUD 236 projects constitute land use restrictions within the meaning of Revenue and Taxation Code section 402.1. Such properties should be valued as provided in Property Tax Rule 4 if reliable market data, i.e., sales of similarly restricted properties, is available, otherwise as provided in Property Tax rule 8. In either situation, non-cash consideration

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accruing to the seller's benefit must be converted to its equivalent cash value pursuant to the methodologies provided in the respective rules. C 2/14/92; C 7/17/98. (Am. 2000–1).

535.0019 Federally Forced Sales. In order to enforce the 160-acre limitation on the size of land holdings in the arid regions of the San Joaquin and Imperial Valleys, the Federal Bureau of Reclamation has required persons owning in excess of 160 acres to enter into contracts whereby they agree to dispose of their excess acres within ten years. This contract limitation is not a use restriction but, rather, a limitation on ownership. Therefore, Revenue and Taxation Code section 402.1 is not applicable. C 5/13/76. (M99–1).

535.0020 Freeway Housing Replenishment Program. Sales of new residential properties as part of a freeway construction program to qualified buyers at prices below current market values are subject to land use restrictions within the meaning of Revenue and Taxation Code section 402.1 where the buyers agree to encumber their respective properties by giving the selling state agency 30 year continuing preemptive rights to purchase the properties. C 3/28/83.

535.0025 Historical Property. A property that qualifies as an historical property as defined in Government Code section 50280.1 and that is subject to an historical property contract pursuant to other specified sections of that code is “enforceably restricted” and must be valued using the capitalization of income

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method specified in Revenue and Taxation Code Sections 439.2 or 439.3. The historical property contract must be signed, accepted and recorded on or before the lien date of the fiscal year for which the valuation would apply. C 9/19/88.

535.0026 Income and Estate Tax Elections. The federal family business tax election under Internal Revenue Code section 2032 provides that a real property is appraised at its lesser “value in use” rather than its fair market value for estate tax purposes. In exchange for the lesser-appraised value, the use of the property is restricted to farming or other agricultural uses. However, a section 2032A election does not place a legal restriction on the use of real property, but rather merely places conditions on the heir’s use of the property that do not run with the land. Thus, such elections are not enforceable government restrictions within the meaning of Revenue and Taxation Code section 402.1. C 10/24/2003. (2004-1).

535.0028 Land Conservation Act Contract. When a property that would usually be considered an appraisal unit includes acreage, some of which is subject to a Land Conservation Act (LCA) contract and some of which is not, it should be appraised as though it were two separate appraisal units. The restricted portion of the property should be valued by the capitalization of income method, as provided in Revenue and Taxation Code section 423, and that value enrolled when that value is less than its factored base year value or current market value. The remainder should be valued and enrolled at its factored base year value or current market value, whichever is less. C 9/20/93. (M99-1).

535.0030 Land Located within Coastal Zone.

1. In the assessment of land located within the coastal zone, assessors must consider the effect upon such value of Coastal Act (Public Resources Code Section 30000 et seq.) jurisdiction over development of such land.

2. Where the use of real property is restricted, Revenue and Taxation Code Section 402.1 generally precludes the use of otherwise comparable sales of land not similarly use-restricted in reaching tax assessment valuation.

3. If an assessor can prove by a preponderance of evidence that a use restriction will be removed from property being assessed in the predictable future, then appropriate comparable sales data may be used to establish value. OAG 3/8/78 (No. SO 77-34, Vol. 61, p. 97).

535.0050 Privately-Imposed Restrictions. Land use restrictions and/or deed restrictions created by or between private persons are not land use restrictions of the kind contemplated in Revenue and Taxation Code Section 402.1. Accordingly, such restrictions should not be considered when determining the values of properties subject thereto. C 3/29/83.

535.0054 Resolution Trust Corporation (RTC) Limitations. Limitations on the manner in which property held in receivership by RTC may be sold do not constitute land use restrictions of the type recognized as government restrictions under Revenue and Taxation Code section 402.1. C 6/22/94.

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535.0060 Subsidy Payments. Revenue and Taxation Code section 402.9 is applicable only to Federal section 236 housing for persons of low and moderate income, not to Federal section 221 subdivision (d)3, Federal section 231, or Farmers Home Administration section 515 housing. C 4/2/82; C 4/7/82; C 7/17/98. (Am. M98-2; 2000-1).

535.0070 Surplus State Residential Property. Sales of surplus state residential properties to qualified buyers at prices below current market values are subject to land use restrictions within the meaning of Revenue and Taxation Code Section 402.1 where the buyers agree to encumber their respective properties by giving the selling state agencies or their designees 30 year continuing pre-emptive rights to purchase the properties. LTA 7/7/81 (No. 81/74).

535.0075 Valuation Upon Removal of Restriction. Property removed from an agricultural preserve shall be valued at its fair market value as of March 1, 1975 or as of the lien date following a subsequent change in ownership. The base year value determined shall be factored in accordance with the requirement of the Revenue and Taxation Code. C 9/7/84.

550.0000 LANDS OWNED BY LOCAL GOVERNMENTS THAT ARE OUTSIDE THEIR BOUNDARIES

See Supplemental Assessment

550.0001 Acquisitions by Public Retirement Systems. A public retirement system is usually an agency of the government whose employees contribute earnings to the system's fund. Real property acquired by such a system which is outside the local government's boundaries is assessed pursuant to article XIII, section 11 of the California Constitution. LTA 1/6/83 (No. 83/3).

550.0005 Improvements, All Counties. New improvements built on land after acquisition by a municipal government will continue to be exempt. However, improvements which were taxable when acquired will be valued at their full cash value as defined by article XIII A of the California Constitution and expanded upon by Property Tax Rule 461. An exception to this category is an improvement which, after March 1, 1954, replaces a previously taxable improvement. Such replacement improvements shall have as an upper limit of value the highest value ever used for taxation of the improvements which were replaced. LTA 6/23/2000 (No. 2000/037).

550.0008 Land Conservation Act Contract. The purchase of property subject to a California Land Conservation Act contract by a public agency, if not by eminent domain or in lieu of eminent domain, does not cancel the contract. The property is subject to tax under section 11, article XIII of the California Constitution, if (1) the situs of the property acquired is outside the boundaries of the public agency, and (2) the property was taxable when it was acquired. C 10/25/2006. (2007-1).

550.0010 Leased For Agricultural Purposes. Land leased by a city to a person who uses it to grow turf grass does not result in the creation of a taxable

LANDS OWNED, ETC. (Contd.)

possessory interest in the land because the growing of turf grass qualifies as an agricultural activity excluded from taxation by the provisions of section 11(f) of article XIII of the California Constitution. Exemption is proper even though turf grass does not qualify for the growing crop exemption as an exempt growing crop. C 3/21/83.

550.0015 **Marina Possessory Interest.** The possessory interest of a private owner of a marina located on land owned by a local government that is outside

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the local government's boundaries and taxable to it under section 11 of article XIII of the California Constitution is taxable to the owner. However, under the provisions of section 11(f) thereof, the value attributable to the possessory interest in the land must exclude the value assessed to the local government. If the value of the highest and best use is the same as or less than the value that the local government is paying taxes on, there can be no value assessed to the owner. C 3/1/78.

550.0020 Possessory Interests Limits. Section 11(f) of article XIII of the California Constitution is a restatement of former article XIII, section 1.68. The object of this section is to insure that a privately owned leasehold in taxable public lands does not escape taxation by means of the arbitrary ceiling on the assessment of the fee to a public entity.

When the full assessed value of the fee exceeds the maximum assessment permissible under section 11, the excess value constitutes an exemption accruing to the owning local government. Thus, if a leasehold interest in such lands is owned by a private lessee, a separate assessment of the possessory interest should be made at the lower of (1) the full assessable value of the possessory interest or (2) an amount representing the difference between the full assessable value of the fee and the amount of the actual assessment against the local government. C 4/27/79; C 1/9/97. (Am. M99–1).

550.0021 Properties of City. A city's interest in property located outside its boundaries is taxable in the manner prescribed by section 11 of article XIII of the California Constitution if the property was taxable when acquired by the city. The use of the property and the fact that it is held jointly with another tax-exempt governmental entity are irrelevant for purposes of section 11 assessment. C 11/25/97. (M99–1).

550.0022 Properties of Redevelopment Agency. Property owned by a city redevelopment agency is exempt from property taxation if the property is located within the city's limits but outside the boundaries of any project areas of the redevelopment agency. OAG 11/21/91 (No. 91/713, Vol. 74, p. 207).

550.0023 Supplemental Assessments. Properties purchased by local governmental entities and taxable because located outside their boundaries are not subject to supplemental assessments. C 11/22/96. (M99–1).

550.0026 Valuation. If the 1967 fair market value and the 1975 base year value are not available from earlier rolls, it is permissible to reconstruct those values in the process of performing current valuation so long as those values are derived from comparable assessments that were made at that time. C 11/22/96.

550.0030 Welfare Exemption. A property is acquired by a health care district from a private hospital corporation. The property is located outside the boundaries of the health care district and at the time of purchase had been receiving the welfare exemption. Since the property was not taxable when it was acquired, the provisions of section 11 of article XIII of the California Constitution are inapplicable. C 5/12/99. (2000–1).

560.0000 LEASED TO GOVERNMENT

See Government-Owned Property
Local Government-Owned Property
State-Owned Property

560.0010 Federal Agency. Privately owned property leased to a federal agency is subject to local property taxation, the same as is property leased to the United States government. Regardless of whether the agency is a federal instrumentality, leased property, unlike property owned by the federal government, is not immune from state and local taxation. To be immune or exempt from property taxation, the federal agency must meet the specific constitutional requirement of property ownership with the agreement between the parties reflecting that the government agency has the full indicia of ownership. C 12/21/2001. (2003–1).

560.0020 Lease-Purchase Contracts. Until such time as the United States takes clear title to property being purchased under the provisions of Public Law 92-313, whereby the U.S. Administrator of General Services is authorized to enter into lease-purchase contracts with private builders; payments are to be credited against the purchase price of the property; and upon the fulfillment of all the terms and conditions of the contract, title to the property is to be transferred to the United States, such property is fully subject to tax. The property should be appraised at the full cash value of the fee-simple rights throughout the term of the lease-purchase contract, it should not be regarded as enforceably restricted, and no division should be made between the leasehold and reversionary interests. The provisions of article XIII A of the California Constitution are applicable to such properties.

In some instances the land is owned by the government but leased to the developer in order to assist him in obtaining financing. Such a lease does not create a taxable possessory interest in the land, for the developer does not retain an exclusive right to possession or beneficial use of the nontaxable publicly owned property. LTA 2/27/79 (No. 79/41).

560.0021 Lease-Purchase Contracts. Property used exclusively by a state or local government agency pursuant to a contract that provides for automatic passage of title to the agency on payment of the agreed rentals should be regarded as beneficially owned by the agency (*Mayhew Tech Center Phase II v. Sacramento County*, 4 Cal.App.4th 497). The constitutional debt limitation on the acquisition of property is not violated by such a contract if its terms do not create a legal obligation to make payments in the future and do terminate the contract upon the failure of the government agency to make payment. C 7/1/92.

560.0040 Personal Property. Absent an applicable exemption, property on the unsecured roll may be assessed to both the lessee and lessor pursuant to Revenue and Taxation Code section 405. Where the lessee is immune from state and local property taxation, the lessor thereby becomes the sole assessee and the person solely responsible for applicable property taxes. The fact that the property is leased by a tax exempt entity does not exempt the property itself from state or local property taxes. However, a lessee under a direct financing lease agreement is considered the “true owner” of the property because the lessor retains legal title only for security reasons. Thus, property subject to such a lease agreement is

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tax exempt if the lessee is immune from property taxation. In determining whether an agreement constitutes a direct financing lease, the parties' intent, as manifested by the lease terms, is controlling. C 10/14/98; C 8/11/2003. (2002-1; Am. 2005-2).

560.0045 Property Statement. Under a "lease to ownership plan" or a direct financing lease, the federal government lessee is considered to be the owner of the personal property if the federal government has exclusive management, responsibility, and control, and must reimburse lessor for applicable sales taxes, use and gross receipts taxes, and personal property taxes. Even though the leased property is immune from property taxes, the private lessor is responsible for filing business property statements for the property under Revenue and Taxation Code section 442(c), unless the property is specifically exempted. C 12/23/2004. (2005-2).

565.0000 LEGAL ENTITIES

See Change in Ownership

565.0010 Business Organization. Arrangements whereby property is conveyed to an individual or individuals in accordance with an instrument that provides that the property is to be held and managed for the benefit of the transferor(s) or their assign(s) as may from time to time be holder(s) of transferable certificate(s) issued by the transferee(s) are denominated in law as Massachusetts Trusts. These organizations should be treated as trusts if the transferee(s) has/have control in the management of the property or as a partnership(s) if the certificate holder(s) and the transferee(s) are associated in the control of the property with the latter acting only as a managing agent(s).

Whether a Massachusetts Trust is a trust or a partnership, it is a legal entity just as is a corporation or a partnership. A transfer of real property to the entity may be excluded from change in ownership if the transfer results only in a change in the manner of holding title. Additionally, since a Massachusetts Trust is a legal entity, transfers of certificates result in changes in ownership only when there is a change in control. Transfers of property from the entity to children or parents of certificate holders and transfer(s) of certificates between children and parents are not within the parent/child exclusion contained in Revenue and Taxation Code section 63.1. C 5/3/94.

570.0000 LESSOR'S EXEMPTION

570.0001 Applicability. A lessor's exemption claim should only be filed when the lease has been adjusted for taxes and the public entity has already received the benefit of the reduction. The exemption claim filed by the public entity (free libraries or museums, public schools, community colleges, state colleges, state universities, or nonprofit institutions of higher education) should list all equipment as to the status, i.e., rental-reduced or no reduction. This will assist in verifying the lessor's claim.

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Upon enrollment, only the rental-reduced equipment will be exempted. For equipment listed as no reduction, taxes will be billed and, when paid, will only be refunded to the public entity upon submission of a claim for refund. C 8/30/79.

570.0005 One-Time Filing. A lessor leasing property to free public libraries or museums, public schools, community colleges, state colleges, state universities, or nonprofit institutions of higher education need not annually file an exemption claim on such property where the exempt organization has the option at the end of the lease to acquire the leased property for one dollar (\$1) or any other nominal sum. The lessor need only to file an affidavit with the assessor within 120 days of the commencement date of the lease, or within 120 days of January 1, 1988, in the case of an existing lease, identifying the subject property and attesting to the purchase option. LTA 3/9/88 (No. 88/20).

570.0010 Reduction in Taxes. Revenue and Taxation Code Section 202.2 requires lessors to reduce lease rental payments on property which receives the benefit of an exemption on the basis such property is used for certain public libraries and museums or used exclusively for public schools, community colleges or state universities, including the University of California, and leased property used exclusively for educational purposes by a nonprofit institution of higher education. Lease contracts entered into prior to September 20, 1978, may be brought under the provisions of Section 202.2 by a mutual agreement that the ongoing contract is canceled and a new, but duplicate, contract shall be commenced. A simple one-page document incorporating the old agreement by reference would accomplish this end. C 11/29/78.

LOCAL BOARD OF EQUALIZATION

*See Assessment Appeals Board
County Board of Equalization*

575.0000 LOCAL GOVERNMENT-OWNED PROPERTY

*See Government-Owned Property
Leased to Government
State-Owned Property*

575.0050 Joint Powers Agency. A joint powers agency composed of California governmental agencies and out-of-state governmental agencies that holds title to property located within the agency's boundary is not subject to tax on that property by virtue of section 3(b) of article XIII of the California Constitution. C 8/13/90.

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580.0000 MANDATORY AUDITS

See Audits

580.0001 Banks and Insurance Companies. Mandatory audits are determined by adding the full value of personal property, fixed machinery and equipment, and trade fixtures. Although the personal property of banks and insurance companies is exempt, banks and insurance companies whose trade fixtures total \$200,000 full value must be audited. LTA 3/25/80 (No. 80/53).

Note: Stats. 1991, Ch. 1148, in effect October 14, 1991, increased amount from \$200,000 to \$300,000.

580.0005 Change in Ownership. When business property is transferred, it is the property value and status of the transferee taxpayer which determines whether and when a section 469 mandatory audit of the transferred property must be conducted. There is no requirement that the audit schedule formerly applicable to the transferring taxpayer be applied to the transferee upon change in ownership. The assessor may, however, perform an audit sooner than four years after the prior audit or acquisition of property exceeding the section 469 specified amount, and maintain the transferred property on the same audit schedule as existed prior to the transfer.

When the transfer is in the form of a change in ownership of a legal entity, or merger of legal entities, the property of the legal entity must be audited within four years of the date when the property of the legal entity was last audited. C 12/2/82; C 10/13/99. (Am. 2000–2).

580.0009 Escape Assessment. If an audit discloses that computer equipment was incorrectly classified on the business property statement and was assessed at a lower value as a result of the misclassification, the assessor may issue an escape assessment pursuant to Revenue and Taxation Code section 531.4 for the value of the equipment that was underassessed. However, if the taxpayer accurately reported the computer equipment, but the assessor determines by audit that incorrect lives were used that caused the equipment to be assessed at a lower value, the equipment is not subject to an escape assessment. A change in a life table involves the exercise of value judgment, and the assessor is not authorized to correct such an error under Revenue and Taxation Code section 4831. C 1/3/2005; April 6, 2006. (2006–2).

580.0015 Leased Real Property. If personal property has been subject to a Revenue and Taxation Code Section 469 mandatory audit, it would be appropriate for the assessment appeals board, upon its own volition or upon the assessee's application, to consider whether the underlying real property at the location forms an appraisal unit therewith even though the real property is leased from a third party. C 6/25/96.

580.0020 Out-of-State Travel. Revenue and Taxation Code Section 470 and Corporations Code Section 1506 provide the assessor with sufficient statutory authority to require that foreign and out-of-state domestic taxpayers bring their records to California for audit purposes. A review of the audit work papers from

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prior out-of-state audits will reveal accounts suitable for processing in this manner. Accounts involving extension records may not be suited to this treatment. A proper screening and identification process should reduce travel expenses related to the audit program. LTA 8/10/78 (No. 78/140).

580.0021 Owner/Lessor. Owner/lessor and lessee of property are both included in mandatory audit requirement of Revenue and Taxation Code Section 469 if the value of the leased property puts them over the value threshold. Stats. 1991, Ch. 1148, in effect October 14, 1991, increased the \$200,000 limitation amount to \$300,000. C 8/31/90.

580.0022 Performance by Appraiser. A person who is hired as an Appraiser I because he has two years of experience selling real estate, but who has no auditing experience and lacks an accounting degree, and who is placed on an Auditor-Appraiser II civil service list based on only an oral examination, is not qualified under Revenue and Taxation Code section 670(d) to perform mandatory audits. C 9/27/95.

580.0030 Results. When refunds result from an audit, the auditor and tax collector are required to offset those refunds by any proposed escape assessments. Generally, escape assessments must be enrolled and delivered to the auditor within four years after July 1 of the assessment year in which the property escaped assessment. Escape assessments not enrolled within the statute of limitations are invalid and may not be used for purposes of offsetting proposed refunds. C 11/25/2002. (2004–1).

580.0040 Trade Fixtures. Trade fixtures, for purposes of inclusion as part of the mandatory audit program, are defined in Civil Code section 1019 as property that a tenant installs for purposes of trade and which does not become an integral part of the building. This includes any property qualifying as fixtures under the definition in the business property statement, plus machinery and equipment classified as improvements. The value of such trade fixtures is to be included as part of the total combined full value of personal property, fixed machinery and equipment, and fixtures when establishing the minimum full value of a mandatory audit. LTA 10/16/79 (No. 79/178); LTA 3/25/80 (No. 80/53).

585.0000 MANUFACTURED HOMES

See Mobilehome

585.0020 Business Inventory Exemption. Pursuant to Revenue and Taxation Code section 5801(b)(2), a manufactured home is classified as personal property unless it has been affixed to land on a permanent foundation pursuant to Health and Safety Code section 18551(a), which requires the recordation of appropriate documents. Thus, a manufactured home owned by a licensed manufactured home dealer in a dealer-owned park and held for sale or lease, even though it is placed on an engineered foundation, would be eligible for the business inventory exemption if all the requirements of Health and Safety Code section 18551(a), including the recordation requirement, have not been met. C 7/19/2000. (2003–1).

MANUFACTURED HOMES (Contd.)

585.0051 Classification. Effective January 1, 1992, Part 13 of Division 1 of the Revenue and Taxation Code, formerly titled “Taxation of Mobilehomes”, is titled “Taxation of Manufactured Homes.” The new law affects the classification of manufactured homes for property tax purposes and expressly provides for the exemption of such homes returned to a dealer for resale. This Letter to Assessors supersedes or affects Letter to Assessors Nos. 81/118 (9/29/81) and 87/32 (3/21/87); Assessors’ Handbook AH 515, pages 19–22, and Assessment Practices Survey, *A Report on the Assessment of Mobilehomes* (1985), pages 3–5. LTA 8/31/92 (No. 92/57).

585.0055 Exemptions. Accessories of manufactured homes are not exempt from property taxation under Water Code sections 20200 or 72096.5. The accessories determined to be improvements to land are subject to property taxes and special assessments, while those accessories classified as personal property are subject to property taxes but not special assessments. C 11/26/85. (M99–1).

585.0060 Site Value. Value, whether positive or negative, attributable to the physical site on which a manufactured home is located should not be included in the value of a manufactured home located on rented or leased land. In establishing the value of such homes, the assessor is required to take into consideration sales prices listed in designated recognized value guides. It is advisable to place in the appraisal record the recognized value guide relied upon and the value indicated therein.

The standard cost approach, comparative sales approach, and income approach, as appropriate, should also be used to confirm that the value guide is within the market range. LTA 7/7/93 (No. 93/35).

585.0065 Supplemental Assessments. A manufactured home subject to local property taxation is subject to supplemental assessment when it changes ownership or when it undergoes a substantial addition or any alteration which constitutes a major rehabilitation or which converts the property to a different use. Any rehabilitation, renovation, or modernization which converts a manufactured home to the substantial equivalent of a new manufactured home is a major rehabilitation of such home.

The relocation of a manufactured home subject to local property taxation without a change in ownership and whether within a county or between counties does not constitute new construction and therefore, does not provide a basis for a supplemental assessment. LTA 8/24/93 (No. 93/46).

585.0090 Voluntary Conversion. An owner of a pre-July 1, 1980, manufactured home that is subject to the vehicle license fee may choose to voluntarily transfer the manufactured home to the property tax roll. In order to convert a manufactured home to property taxation, an owner must give notice to the county assessor pursuant to Revenue and Taxation Code section 5801(a) in addition to recording the form that gives notice of the conversion to the Department of Housing and Community Development. The conversion from the vehicle license fee to the local property tax roll is not subject to supplemental assessment because there is no change in ownership or new construction. C 3/13/2006. (2007–1).

590.0000 MINES AND MINERALS

590.0002 Appraisal of Oil Producing Property Encumbered by a Lease. A procedure to estimate the economic life of an oil producing property is contrary to Property Tax Rules 2(a), 8(c) and 8(d) where royalty payments are deducted from the cash flow because the resulting value of such property reflects the encumbrance of the royalty agreement under the lease. C 4/11/95.

590.0003 Appraisal Unit. Under Revenue and Taxation Code section 51(d), an “appraisal unit” is the unit that persons in the marketplace commonly buy and sell as a unit or that is normally valued separately. Property Tax Rule 469(c)(6) further defines “appraisal unit” within the context of mining property as “a mineral property that persons in the marketplace commonly buy and sell as a unit or that is normally valued separately.” An appraisal unit may consist of multiple parcels and various types of property interests, including mining claims. Several factors should be considered when determining whether multiple parcels are to be valued as one appraisal unit. These factors include (1) the functional and economic integration of the parcels, (2) the attainment of highest and best use when the parcels are analyzed as a single unit, (3) contiguity, (4) common ownership, and (5) current or prior combined sales of the parcels. Thus, a group of fifteen unpatented mining claims were properly treated as one appraisal unit because the parcels were all contiguous, under common ownership, and had been transferred twice as one unit. C 3/26/2003. (2004-1).

590.0005 Geothermal Properties. In *Phillips Petroleum Company v. Lake County* (1993) 15 Cal.App.4th 180, the court held that the interest of a lessee under a geothermal lease having proved reserves must be assigned a base year value at the time such an interest is acquired after March 1, 1975, and that such an interest may not be reappraised annually as “new construction in progress” as the facilities to develop the resource are constructed. LTA 7/22/93 (No. 93/40).

590.0015 Oil Well Royalty Rates. Royalty payments are amounts paid to a mineral-rights owner for the right to produce oil in paying quantities. The payment is one of several expenses a producer (working interest) encounters in determining whether or not continued production is economically feasible. When economic operating conditions precipitate the abandonment of a property, it has reached the end of its economic life.

Generally speaking, the concept of “economic” rent (royalties) is not applicable to oil and gas properties, nor is the appraisal principle of substitution. The royalty amount negotiated is usually the best indicator of a proper rent for the property, which, in turn, is a reliable indicator of economic life.

In determining the value of the mineral right, as contrasted with determining the period of time the working interest will operate the well, royalty payments are the equivalent of rent; and as it provided in Property Tax Rule 8(c), they do not qualify as “gross outgo”, which is subtracted from “gross return” in the income approach to value. LTA 8/6/92 (No. 92/52).

590.0018 Patented and Unpatented Claims. Unpatented mining claims create taxable possessory interests while patented claims constitute fee ownership interests. In determining when the transfer of either type interest is a change in ownership, Revenue and Taxation Code Section 61(a) is controlling. C 12/13/89.

MINES AND MINERALS (Contd.)

590.0020 **Proof of Labor.** The filing of a proof of labor pertaining to a mining claim does not transfer a present interest, the beneficial interest, or a right equivalent in value to the fee interest in the claim. There being no extension or renewal of the possessory interest upon such a filing then, the filing of a proof of labor does not give rise to reappraisal of the possessory interest. C 7/17/80.

590.0021 **Proof of Labor.** If the filer of a location notice for a mining claim does not annually submit a *Proof of Labor* form (fee has been substituted for form) to the appropriate federal authority, a prima facie presumption arises that it is the intent of the claimant to abandon the claim at the end of the period during which the work (now fee) should have been performed (paid). However, if the claimant performs the required work (pays the required fee) in a subsequent year and before a crossfiler files a location notice for the same claim site, the assessor should continue to assess the claim to the original filer rather than the crossfiler on the basis that the original claimant's actions indicate non-abandonment. The assessor is not required to pass upon the condition of title to property for purposes of assessment. *Tilden v. Orange County* (1949) 89 Cal.App.2d 586. C 2/17/88.

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Property Taxes Law Guide
PROPERTY TAX ANNOTATIONS

MINES AND MINERALS (Contd.)

590.0022 Proof of Labor. Effective October 5, 1992, Congress temporarily suspended the “proof of labor” requirement and substituted a \$100 per year per claim fee. The change has no impact on the assessment of such properties. LTA 10/22/93 (No. 93/64).

590.0025 Stockpiled Ore and Tailings. Materials severed from the earth by mine operators become personal property that falls into three broad categories: (1) economic-grade ores ready for processing; (2) low grade ores that will be processed in the future if and when economic conditions warrant; and (3) waste materials, i.e., tailings.

The first category qualifies as raw material held for processing and sale. As such, it is eligible for the business inventory exemption. The second category is either inventory intended for future sale or, lacking a current market, worthless personal property. It is either exempt or of no enrollable value. The third category is clearly personal property of no value. This may change when the tailings are returned to a permanent resting place and again become land and if the materials later become economic to mine. LTA 9/16/91 (No. 91/62).

590.0030 Tax Refund—Abandoned Claim. Taxes paid on an unsecured assessment for an unpatented mining claim where the mining claim was deemed abandoned and void because of a defective filing are subject to refund upon proper application for refund of taxes. C 8/24/78.

590.0035 Valuation Date. Pursuant to Property Tax Rule 469, the date of valuation of the right to produce minerals is the date such minerals undergo a change in ownership or the date the production of proved mineral reserves commences. Reserves that may not be produced for lack of legally required permits are not assessable unless the owner has started production without appropriate permits. While permits themselves are not assessable property, they may be considered part of the cost of new construction and in valuing the mineral rights when production starts, but shall not be considered for purposes of valuing the right to explore. C 8/5/96. (M99-1).

590.0040 Value Decline. In determining whether a value decline has occurred in a mineral property, the appraisal unit to be considered is as described in Property Tax Rule 468 subdivision (c)(6) for oil and gas properties and as described in Property Tax Rule 469 subdivision (e)(1)(C) for mineral properties other than oil, gas, and geothermal resources. The provisions of Property Tax Rule 461 subdivision (d) are not applicable to properties that are covered by a specific rule, such as Rules 468 and 469. C 3/23/88.

600.0000 MOBILEHOME

*See Financial Corporations
Manufactured Homes*

600.0001 Assessment. As the result of Statutes of 1979, Chapter 1160, any mobilehome installed upon a foundation system on the owner’s land that complies with the conditions set forth in Health and Safety Code Section 18551

MOBILEHOME (Contd.)

is real property subject to property taxation on the secured roll. As real property, mobilehomes will be valued in accordance with article XIII A, section 2 of the Constitution. LTA 1/11/80 (No. 80/4).

600.0015 Disaster Relief. Revenue and Taxation Code Sections 172 and 172.1 extend disaster relief to mobilehomes, but only to damage resulting from a disaster declared by the Governor. And, mobilehomes must be “destroyed” by the disaster, which for assessment purposes means damaged in excess of the economic cost to cure the damage or declared a total loss for insurance purposes. There are no pro rata tax reduction provisions and no relief is available where mobilehomes have been only partially damaged. LTA 12/17/82 (No. 82/139).

600.0020 Exemptions.

1. Mobilehomes may be eligible for one or more of the following: homeowners’ exemption, renters credit, senior citizens’ property tax assistance, senior citizens’ property tax postponement, or disabled veterans’ exemption, depending upon the specific circumstances.

2. The Soldiers and Sailors Relief Act precludes collection of the California vehicle license fee with respect to a non-resident military person’s mobilehome, but not the registration fee.

3. Mobilehomes on properties in California required by the United States prior to September 19, 1939, (federal enclaves) are not subject to property taxation.

4. Mobilehomes located within the boundaries of Indian reservations and owned by members of the governing tribes are exempt from property taxation. LTA 4/17/81 (No. 81/54); LTA 9/29/81 (No. 81/118).

600.0040 Service Personnel. Mobilehomes owned by United States service personnel stationed in California on active duty and classified as personal property are exempt from property taxation pursuant to the Soldier’s and Sailor’s Civil Relief Act of 1940, section 574, if the service personnel declare residency outside California. However, if the mobilehome of a military person is classified as an improvement, it is subject to property taxation. C 2/25/85; C 3/19/85; C 10/12/94. (Am. M98–2; M99–1; 2002–2).

605.0000 MOTION PICTURES

605.0001 Video Cassettes. Video cassettes actually rented or leased on the lien date are subject to property tax. Pursuant to Revenue and Taxation Code Section 988(a), the full value of the cassettes is the full value of only the tangible materials upon which such cassettes are recorded. LTA 8/14/86 (No. 86/60).

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610.0000 NEWLY CONSTRUCTED PROPERTY

See Golf Courses

Supplemental Assessment

610.0001 Appraisal Upon Completion. Construction begins in July 1976 and is completed in January 1979. The structure is appraised at \$30,000 on March 1, 1977 (when one-third complete), at \$60,000 on March 1, 1978 (when two-thirds complete), and has an actual fair market value of \$120,000 as of January 1, 1979. The March 1, 1979, newly constructed base year value is \$120,000. Factoring commences March 1, 1980. C 2/11/80.

610.0002 Assessment. When an improvement is made to an existing house, only the portion of the property that is newly constructed receives a new base year value. C 5/3/2007. (2008-1).

610.0003 Builder's Exclusion. New construction is deemed to be complete as of the date that the new construction is available for use by the owner, unless the owner does not intend to occupy or use the property and so notifies the assessor prior to, or within 30 days of commencement of construction. If the property is transferred prior to completion of the new construction, any succeeding owner who purchases the property prior to completion will qualify for the exclusion if the succeeding owner sends such notice to the assessor prior to, or within 30 days of that owner's commencement of construction. Thus, the new construction exclusion provisions of Revenue and Taxation Code section 75.12 apply to each owner of the property. C 11/25/97. (M99-1; Am. 2000-2).

610.0004 Builder's Exclusion. There is no conflict between Revenue and Taxation Code section 75.12, which excludes individuals from paying supplemental assessments if all the requirements of that section are met, and Revenue and Taxation Code section 71, which requires assessment of construction in progress on the lien date. Section 75.12 relates to supplemental assessments, i.e., assessments made in the interim period between one lien date and the lien date in the subsequent year, and section 71 relates to assessments on the regular roll on the lien date. C 2/18/97. (M99-1).

610.0005 Cable Television. The cable television hook-up of a new subscriber results in new construction where additions of real property are made. If, however, the hook-up of a new subscriber merely involves connecting existing lines, no new construction results.

In determining whether new construction is assessable to the cable television system owner or to the property owner, *Tele-vue Systems, Inc. v. Contra Costa County* (1972) 25 Cal.App.3d 340, holds that the interior portion of the cable television house drop is not assessable to the system owner. C 6/15/88.

610.0008 Change in Use. Physical alterations to a structure that permit a change in use from one of the five general classifications of use types, i.e., agricultural, residential, commercial, industrial, and recreational, to another, or from one sub-use type to another, constitute new construction. Examples of sub-use types in the commercial use classification are office buildings, retail stores, food sales, and service and repair shops. C 5/3/85.

NEWLY CONSTRUCTED PROPERTY (Contd.)

610.0009 Change in Use. Physical alterations to a warehouse that makes it usable as office space constitutes new construction because it is a change in use of the portion of the improvement that was altered. For assessment purposes, only the value added by the physical alteration is subject to reappraisal. The land and that portion of the improvement that were not subject to new construction are not subject to reappraisal. Thus, the base year value established for the physical alteration is to be added to the base year value of the pre-existing land and portion of the improvement not subject to new construction. C 1/17/2001. (2002–1).

610.0010 Completion Date of Well. A well is completed and subject to supplemental assessment when it is first available for use. Thus, a well that was available for use and placed in production on August 15 would be subject to supplemental assessment on September 1, whereas if the well were available for use on July 15 but was not yet producing, it would be subject to supplemental assessment on August 1. LTA 12/15/87 (No. 87/100).

610.0013 Contaminated Property. Section 2(i) of article XIII A of the California Constitution excludes from new construction any repairs to, or replacement of, property that was damaged or destroyed during the remediation of environmental problems on a “qualified contaminated property,” as defined. However, the construction of improvements to replace structures that were rendered unusable because of contamination, but which were not damaged or destroyed, does not qualify for the exclusion. C 9/30/2002. (2004–1).

610.0015 Construction in Progress. A construction project available for occupancy, although vacant for lack of tenants, is complete and its base year value should be determined.

An incomplete construction project no longer qualifies as construction in progress and is to have its base year value determined when it has come to an unscheduled halt for an extended period and there are no definite plans for continuation of construction within a reasonable time.

A construction project to be constructed in definite stages, with some portions being completed and available for use before other portions are constructed, should have base year values determined for the various portions as they are completed. LTA 5/8/80 (No. 80/77).

610.0020 Development of Mining Properties. Development of mining properties which constitutes new construction as defined in Revenue and Taxation Code section 70 shall, pursuant to section 71, be appraised at its full cash value on the lien date and on each lien date thereafter until completed, at which time the entire property shall be appraised at its full value. C 5/26/82.

610.0023 Development or Use Permits. Increases in value which result from the issuance of development or use permits such as permits for water and/or sewer service are similar to value increases that result from zoning changes and are similarly not includable in the base year value until the property changes ownership. LTA 5/9/91 (No. 91/37); C 4/28/2005. (Am. 2006–1).

610.0024 Disabled Residents Exclusion. The construction, installation, or modification of any portion or structural component of an existing single-family or multiple-family dwelling which is eligible for the homeowners’ exemption, for

NEWLY CONSTRUCTED PROPERTY (Contd.)

the purpose of making the dwelling more accessible to a severely and permanently disabled person who is a permanent resident of the dwelling, is excluded from the term “newly constructed.” The exclusion applies to the construction of completely new additions as well as to modifications of existing fixtures, facilities, or items in the home. LTA 1/21/93 (No. 93/05).

610.0025 Drilling of Wells. The drilling of oil, water, gas, and geothermal wells on the lien date should be valued like other projects under construction on the lien date. The cost-to-date, including prorated research and administrative costs, represents value as of the lien date. If, after completion, a well is incapable of producing, is uneconomic, or is unusable for the purpose for which it was drilled, its value should be recalculated to reflect such lack of economic viability. LTA 8/25/81 (No. 81/95).

610.0026 Drilling of Wells. The drilling of a new well and the simultaneous filling of an old well constitute construction that may be treated as one and generate a single new net assessment. C 5/24/94.

610.0030 Dry Hole Wells. The determination of the value of new construction of a new well requires the appraisal of the total unit, well and mineral reserves, prior to the allocation of value between the newly constructed well and the proved mineral reserves. When there are no future benefits anticipated from a newly drilled well, that is, no new reserves, no alternative uses, no operating benefits, etc., there is little, if any, value attributable to the new construction. LTA 4/23/87 (No. 87/40).

610.0033 Encroaching Improvements. Upon assessment of encroaching improvements, only the new construction is assessed and given a new base year value; the land upon which the improvements lie retains its base year value. Even if the encroaching improvements had been misclassified as “land,” the land underlying them would not be assessed to the encroacher upon either the completion of construction or a subsequent change in ownership. C 12/9/98. (2000-1).

610.0034 Exclusion for Damage or Destruction. Timely reconstruction of golf course property due to damage gradually caused by the use of reclaimed water containing high levels of sodium, which accumulated in the soil over a period of time, constitutes “new construction.” Because the damage resulted from the ongoing watering and not from a single, distinct occurrence, the damage did not result from “misfortune or calamity” within the meaning of Revenue and Taxation Code section 70(c) and, therefore, does not qualify for exclusion from “new construction” under that provision. C 10/5/99. (2001-1).

610.0035 Fire Detection Equipment. Such equipment is excluded from the definition of “newly constructed” if it is constructed or installed in an existing building, but such equipment is not excluded from the definition of “change in ownership.” Upon a change in ownership of real property that has had such equipment installed, the new base year value of the property should include the value of the existing fire detection equipment. C 12/15/95.

NEWLY CONSTRUCTED PROPERTY (Contd.)

610.0036 Fire Suppression Systems. The exclusion contained in Revenue and Taxation Code section 74 is not limited to fire suppression systems and equipment that protect structures only. As long as fire suppression systems and equipment that protect persons, fixtures, and personal property are installed in an existing building and meet the definitions contained in section 74(c), those systems should be excluded from new construction. C 1/29/2003. (2004-1).

610.0040 Fixture Replacements. A major rehabilitation of a fixture, which converts it to the substantial equivalent of a new fixture, as well as the installation of new fixtures in an improvement constitute new construction. Property classified as a fixture should be so classified, regardless of the setting in which it is found. For example, a fixture in an automobile repair shop is a fixture when situated in a service station. C 6/3/87.

610.0045 Improvement Alterations. An increase in net income following the alteration of an improvement does not, in and of itself, satisfy the test for determining whether or not the alteration constitutes “new construction.” C 8/6/82.

610.0050 Installation of Door in Common Wall. Installation of a door in the common wall between a previously owned condominium and a newly acquired adjacent condominium does not constitute “new construction” as that term is defined in Revenue and Taxation Code Section 70 and Property Tax Rule 463 insofar as the previously owned condominium is concerned. C 1/9/87.

610.0051 Land. The reclamation of alkaline soil, whereby unproductive land is made usable for agricultural purposes, results in an alteration of the land and conversion thereof to a different use. Since such reclamation normally takes several years, it should be treated as construction in progress on the corresponding lien dates until completed. C 8/10/81.

610.0053 Licensed Manufactured Home. The remodel and alteration of a licensed manufactured home, that remains subject to the Vehicle License Fee and does not become real property pursuant to Health and Safety Code section 18551, do not constitute “new construction” or subject the manufactured home to local assessment. However, a foundation and accessories that are not part of and incorporated into the manufactured home would be assessable improvements to the real property. C 1/15/2002. (2003-1)▲

NEWLY CONSTRUCTED PROPERTY (Contd.)

610.0060 New Construction: Examples.

1. Land alterations that are new construction:
 - a. Land leveling
 - b. Extensive site preparation prior to building
 - c. Terracing of a hillside
 - d. Clearing of a brush-covered parcel
 - e. Developing of alkali land for farming
 - f. Development of rural land into subdivision
 - g. Development of a gravel pit
2. Land alteration that may not qualify as new construction:
 - a. Releveling of existing row crop land
 - b. Pulling of orchard trees for replanting
 - c. Rebuilding of levees or ditches
 - d. Minor site preparation prior to building
3. Improvement alterations that are new construction:
 - a. The complete renovation of an older structure or portion thereof
 - b. The conversion of a portion of a warehouse to office space
 - c. The conversion of a garage to living area
 - d. The conversion of an existing room to a bathroom
 - e. The conversion of a single-family residence to a duplex
4. Improvement alterations that may not qualify as new construction (no change in use):
 - a. Maintenance and repairs
 - b. Redecorating
 - c. Replacement of existing kitchen or bathroom cabinets in a home
 - d. Replacement of a home air conditioner. LTA 11/30/79 (No. 79/204).

610.0063 Off-Site Improvements. Construction that is not an addition or alteration to the subject property is not “new construction” as that term is defined in Revenue and Taxation Code section 70 and Property Tax Rule 463, and costs related to such off-site construction should not be used as an indicator of the added “new construction” value to the subject property. The value enhancement resulting from the construction of an off-site improvement, such as a freeway offramp not located on the subject property, is only assessable when the subject property changes ownership. At that time, the enhanced value would be reflected in the marketplace and recognized in the sales price and the reappraisal. C 5/12/2000. (2001–1).

610.0065 Photovoltaic Electric Power Generating Plant. As the result of Revenue and Taxation Code Section 73, “newly constructed” as used in article XIII A section 2(a) of the California Constitution does not include the construction of any active solar energy system, including a photovoltaic electric power generating plant. C 2/18/83.

NEWLY CONSTRUCTED PROPERTY (Contd.)

610.0070 Planting of Bulbs. Under Revenue and Taxation Code Section 70, Property Tax Rules 463 and 466, and AH 567—*Assessment of Nursery Stock Handbook*, the planting of bulbs is new construction of the land, but neither the removal of bulbs and replanting in the same field nor the relocation of bulbs from one field to another, absent a change in ownership, is new construction. C 2/10/83.

610.0075 Rebricking Furnace. The rebricking of the throat area of a commercial furnace every three or four years constitutes routine maintenance; whereas the shut-down of the furnace every eight years for a month during which time 50 percent to 90 percent of the furnace bricks are replaced constitutes “major rehabilitation” subject to reappraisal. C 6/9/83.

610.0080 Seismic Safety Exclusion. Article XIII A, section 2(a) of the California Constitution and Revenue and Taxation Code Section 70(d) provide that locally mandated building improvement or reconstruction related to seismic safety and required for unreinforced masonry-walled structures will be excluded from new construction for 15 years following the commencement or completion of the reconstruction. This means that qualifying reconstruction will be exempted from assessment in the first tax year in which it exists, whether as construction in progress or as completed work, and the following 14 tax years. The assessor shall enroll the excluded property at its current full cash value in the sixteenth tax year following the tax year in which the reconstruction or improvement was begun.

It is important that the property owner establish to the assessor’s satisfaction that the work in progress is in fact required to comply with a local seismic safety ordinance, since only such work can be excluded. If the governing body will not issue a certificate of compliance to the property owner until the reconstruction is complete, he or she can still provide evidence to the assessor that the work is required by showing the original order to comply sent to him or her by the local agency and also a copy of the building permit authorizing the reconstruction or improvement of the building. This interim documentation would meet the statutory requirement.

If the property changes ownership during the 15 year period, a new base year value must be established and enrolled for the entire property, including the previously excluded portion of new construction, as of the date of the change in ownership, and a supplemental assessment must be enrolled. LTA 12/17/2001 (No. 2001/089). (Am. 2002–2).

610.0085 Solar Energy System Exclusion. There is excluded from new construction active solar energy systems, i.e., systems which use solar devices thermally isolated from living space or other areas where the energy is used to provide for the collection, storage or distribution of solar energy. Property that is merely used in conjunction with an active solar energy system, such as fences or miscellaneous use buildings, is not included. C 4/11/86.

610.0087 Solar Energy System Exclusion. The construction of a carport that has active solar panels installed on its roof is not excluded from assessment under Revenue and Taxation Code section 73 unless the carport itself is part of the

NEWLY CONSTRUCTED PROPERTY (Contd.)

active solar energy system. A carport that merely serves as the mounting point for solar panels is not considered part of the active solar energy system. Thus, such a structure is subject to assessment as new construction. C 1/17/2006. (2006–2).

610.0095 Soundproofing Homes Near Airports. Remodeling homes near airports to include soundproofing features such as the installation of insulation, storm windows, insulated walls constructed inside exterior walls, and special ventilating systems fall into the category of replacement items, not new construction. If, however, at the same time such remodeling occurs a home is substantially upgraded and thereafter no longer resembles the original home, the building activity would constitute new construction and the value of the home over and above the value of the soundproofing features would be subject to revaluation. LTA 11/1/85 (No. 85/113).

610.0105 Tenant Improvements. While existing improvements are not assessed at a higher value when tenant improvements are newly constructed, the new improvements are to be enrolled at their full cash value upon completion of construction.

One valid method of valuing new tenant improvements is the cost approach, which takes into account the assessee's out-of-pocket and imputed costs. C 11/30/90.

610.0115 Valuation. A taxpayer purchased a vacant residential lot and had a home constructed by a licensed general contractor. None of the construction was done by the taxpayer. Upon completion of construction, the assessor properly considered two methods, the replacement cost and the comparable sales approaches, to estimate the fair market value of the new construction. The costs of construction may not equal the fair market value of a new residence. Therefore, county assessors should employ the valuation approach(es) that best estimates the value of new construction, not merely its cost. C 7/11/2005. (2006–2).

610.0120 Wetland Mitigation Banks. “Wetland mitigation banking” is a mandatory program administered by the Department of Fish and Game to mitigate any unavoidable impacts of development, by either purchasing existing wetlands nearby and preserving them into perpetuity or by creating new wetlands and similarly preserving them. Government agencies and/or private entrepreneurs may place an approved amount of wetland acreage into “banks” and assign a corresponding number of “credits” to each bank on a per-acre-of-wetland basis. One or more “credits” are then purchased by landowners in the area who, in order to obtain development permits, insure no net loss of wetlands is caused by their projects.

The creation of new wetlands in a wetland mitigation bank site is considered new construction under Revenue and Taxation Code section 70(a)(2) and Property Tax Rule 463(b)(2) as an alteration of land which constitutes a major rehabilitation or which converts the property to a different use. However, the sale of wetlands credits is not a reappraisable event, since the credits do not represent

NEWLY CONSTRUCTED PROPERTY (Contd.)

the transfer of a present interest in the wetland mitigation bank site real property but are comparable to offsite improvements adding value to the land.

On any lien date, the taxable value of a wetland mitigation bank should be the lower of (1) its adjusted base year value, including any value added for new construction completed in creating the wetland bank, or (2) its current market value, taking into account the restrictions on use and the eventual depletion of revenues from the sale of credits. Once all credits are sold, the owner's fee interest in the wetlands acreage would continue to be assessed. C 5/4/2000. (2001-1).

NURSERY STOCK

See Business Inventory Exemption
Growing Crops Exemption
Timber Yield Tax

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620.0000 OPEN-SPACE LANDS

*See California Land Conservation Act
Farmland Security Zone
Land Use Restrictions*

620.0002 Cancellation Fees and Charges. Prior to January 1, 1988, the cancellation fee was based upon the property's taxable value as defined in Property Tax Rule 460(b)(6). As of January 1, 1988, that fee is calculated based upon current fair market value as determined pursuant to Revenue and Taxation Code Section 110. C 4/3/84; C 11/7/88.

620.0005 Change in Ownership. When open space property under a Williamson Act contract undergoes a change in ownership, the assessor must process the change in ownership and establish a base year value for the property as of the date of change in ownership. The new base year value of the restricted property is not enrolled, and therefore, no supplemental assessments are issued. However, as to the non-restricted portions of the property (e.g., structures, nonliving improvements), the new base year value is enrolled and supplemental assessments are levied based upon the date of the change in ownership. C 8/2/99. (2001-1).

620.0009 Supplemental Assessments. Williamson Act properties undergoing nonrenewal are not subject to supplemental assessment in addition to the method mandated by Revenue and Taxation Code Section 426. C 8/3/94.

620.0015 Valuation. As of January 1, 1988, Revenue and Taxation Code Section 423 requires a three-part value comparison and directs the assessor to enroll the lesser of either the restricted value, the factored base-year value, or the current market value as determined annually. LTA 6/13/88 (No. 88/42).

620.0020 Valuation During Non-Renewal Period. Revenue and Taxation Code Section 426 directs assessors to determine the value of the land by capitalization of income as provided in Section 423. Section 423 states in part that unless a party to an instrument which creates an enforceable restriction expressly prohibits such a valuation, the valuation resulting from the capitalization of income method described in this section shall not exceed the valuation that would have resulted by calculations under Section 110.1, as though such property was not subject to an enforceable restriction in the base year. Therefore, if neither party to the contract objects and the factored unrestricted base year value is less than the currently computed restricted value, the factored base year value will be enrolled. The comparison of restricted and unrestricted value indicators must be made annually, for the relationship between them may change during the 9 year nonrenewal period.

On the other hand, if either party to the contract objects to the comparison, the valuation procedure contained in Section 426 will apply and the current restricted value will be revised annually by the present worth of the difference between the current restricted value and the factored base year value discounted for the remainder of the nonrenewal period.

OPEN-SPACE LANDS (Contd.)

A special circumstance exists when the city or county has implemented the provisions of Section 423.3, under which the assessor is required to compare the current restricted value to a percentage of the factored base year value and enroll the lower. As Section 423.3 is not specifically referred to in Section 426, it is the Board's position that the value determined under 423.3 does not enter into the nonrenewal valuation process. Even if 423.3 is in effect, the value to enroll during the nonrenewal period is the factored base year value when such figure is less than the current restricted value as calculated via the income approach. LTA 7/14/81 (No. 81/78).

620.0025 Valuation—Restricted and Nonrestricted Property. When a property that would usually be considered an appraisal unit includes acreage, some of which is subject to a Land Conservation Act (LCA) contract and some of which is not, it should be appraised as though it were two separate appraisal units. The restricted portion of the property should be valued by the capitalization of income method, as provided in Revenue and Taxation Code section 423, and that value enrolled when that value is less than its factored base year value or current market value. The remainder should be valued and enrolled at its factored base year value or current market value, whichever is less. C 9/20/93. (M99–1).

620.0050 Zoning Change. Both the constitutional and statutory provisions governing the reduced property tax valuation afforded to enforceably restricted open-space lands require that the enforceable restriction be in existence (i.e., signed, accepted, and recorded) on or before the lien date of the tax year to which the reduced valuation is to apply. If a resolution is passed to retroactively apply an enforceable restriction, the parcel will not thereby become eligible for reassessment as enforceably restricted open-space land for any prior year. C 4/9/2002. (2003–1).

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625.0000 PARENT-CHILD TRANSFER

See Change in Ownership

Grandparent-Grandchild Transfer

625.0010 Adoption. The parent/child exclusion contained in Revenue and Taxation Code section 63.1 does not apply to those persons adopted after they reach the age of 18 years, whether the adoption occurred before or after the enactment of the section, the language of which is clear and unambiguous. C 8/11/89.

625.0015 Business Organization. Arrangements whereby property is conveyed to an individual or individuals in accordance with an instrument that provides that the property is to be held and managed for the benefit of the transferor(s) or their assign(s) as may from time to time be holder(s) of transferable certificate(s) issued by the transferee(s) are denominated in law as Massachusetts Trusts. These organizations should be treated as trusts if the transferee(s) has/have control in the management of the property or as a partnership(s) if the certificate holder(s) and the transferee(s) are associated in the control of the property with the latter acting only as a managing agent(s).

Whether a Massachusetts Trust is a trust or a partnership, it is a legal entity just as is a corporation or a partnership. A transfer of real property to the entity may be excluded from change in ownership if the transfer results only in a change in the manner of holding title. Additionally, since a Massachusetts Trust is a legal entity, transfers of certificates result in changes in ownership only when there is a change in control. Transfers of property from the entity to children or parents of certificate holders and transfer(s) of certificates between children and parents are not within the parent/child exclusion contained in Revenue and Taxation Code section 63.1. C 5/3/94.

625.0019 California Department of Veterans Affairs. A purchase by the Department of Veterans Affairs of residential property for sale to a veteran creates a situation that is analogous to a transfer to a trust for the benefit of the purchasing veteran. The Department takes legal title to the property only to secure payment of the purchase price. When the person(s) selling the property to the Department is the parent(s) of the purchaser of the property from the Department, the parent-child exclusion is available, provided the transfers are completed on or after November 6, 1986, and all other requirements for the exclusion are met. C 9/19/88. (M99-1).

625.0021 Certification. Claims for exclusion from change in ownership by incapacitated transferees of properties received from parents or children may be filed by the transferees' legal representatives. Assessor personnel should verify a transferee's representative's authorization to file a claim. LTA 3/29/91 (No. 91/23).

625.0030 Claims. Parent-child transfers are excluded from the definition of change in ownership provided a claim for exclusion is filed within three years of the date of any transfer made on or after November 6, 1986.

PARENT-CHILD TRANSFER (Contd.)

A change in ownership of property held in a revocable trust occurs when the trust becomes irrevocable, not when the trustee executes or records a deed to the property. The fact that this filing requirement limitation was enacted into law after a given transfer took place is not a basis for an assessor, a local board of equalization, or the State Board of Equalization refusing to enforce the requirement on the grounds that the statute requiring the filing is unconstitutional. C 8/9/91.

625.0035 Claims. Revenue and Taxation Code section 63.1(f), the claim reporting provision for the parent-child exclusion, requires that the transferor of property report his or her social security number or taxpayer identification number on the claim form for each transfer of non-principal residence property qualifying for the parent-child exclusion under Revenue and Taxation Code section 63.1(a)(2). The requirement for the social security or taxpayer identification number on the claim form is to provide the Board with a means of monitoring and cumulating the value of transfers between parents and children to determine whether the one million dollar limitation of section 63.1(a)(2) has been reached or exceeded. Thus, for non-principal residence property, if the transferor has a social security or tax identification number but refuses to disclose it on the claim form, the parent-child exclusion should be denied. C 6/19/2007. (2008–1).

625.0036 Claims. As of September 30, 1990, and thereafter, a claim for exclusion of a parent/child transfer from change in ownership must be filed within three years after the date of the transfer for which the claim is being filed or prior to the transfer of the real property to a third party, whichever is earlier. A claim for exclusion is “timely filed” only if the minimum information required by Revenue and Taxation Code section 63.1(d) is provided before the appropriate deadline. LTA 10/29/91 (No. 91/76); LTA 2/28/92 (No. 92/15). (M99–1).

625.0037 Claims. The period for filing a claim for the exclusion begins *on* the date of purchase or transfer, or *on* the date of mailing of the notice of supplemental or escape assessment. The phrase “within three years” in Revenue and Taxation Code section 63.1(e)(2) means the claim must be filed *no later than* three years for a purchase or transfer; and in section 63.1(e)(3), the phrase “within six months after” means the claim must be filed *within* six months of the date of mailing the notice. For a transfer that occurred on October 23, 1992, the three-year period ended October 23, 1995; a claim filed on October 24, 1995, was late. And if the notice of supplemental assessment was mailed on December 20, 1994, the six-month filing period would have ended no later than June 20, 1994. C 3/22/96. (M99–1).

625.0038 Claims. Revenue and Taxation Code section 63.1 as amended by the Statutes of 1988 provides that the filing requirement applicable to the parent/child exclusion from change in ownership applies to all transfers, including those accomplished through the medium of a trust, which occurred on or after November 6, 1986.

Chapter 709 of the Statutes of 1993 provides that notwithstanding the previous time limits, a claim under section 63.1 shall be deemed to be timely filed if it is

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filed within six months after the date of mailing of a notice of supplemental assessment or escape assessment issued as a result of the transfer for which the claim is filed. This provision is also applicable to all transfers occurring after November 6, 1986. C 10/7/93.

625.0039 Claims. Under Revenue and Taxation Code section 63.1, the statute of limitations for filing a claim for the parent-child exclusion commences on the date of the purchase or transfer of the real property. Accordingly, a claim for the parent-child exclusion is invalid where it is filed prior to the date of the purchase or transfer. C 12/13/2005. (2006-2).

625.0050 Corporation. If a person owns all of the stock in a corporation and leaves it to his children in equal shares, they become owners on the death of the parent. A liquidation of the corporation and distribution of corporate assets would not qualify as an excluded transfer between the decedent and the children. It would be a transfer from the corporation to its shareholders and constitute a change in ownership unless title was taken by the children in such a way as to result only in a change in the manner of holding title and excluded under Revenue and Taxation Code section 62(a)(2). C 6/10/88.

625.0060 Date of Death. The parent-child exclusion from change in ownership does not apply in situations that involve the vesting of title to property on the death of a trustor that occurs prior to November 6, 1986, even if the trustee delays transferring legal title to the child-beneficiary until after that date. C 5/11/89. (Am. M99-1).

625.0061 Date of Death. When real property is devised by a parent directly to a child or children, a change in ownership normally occurs on the date of death of the parent. When, however, the parent died prior to November 6, 1986, but his/her estate was probated and distributed pursuant to court decree after that date, the court of appeal in *Larson v. Duca* (1989) 213 Cal.App.3d 324, held that the date of distribution is the date of change in ownership, and therefore, the parent/child exclusion applies. The court narrowly limited its holding to cases involving identical facts and, therefore, its decision does not apply to distributions from testamentary trusts, in instances in which the parent died prior to November 6, 1986, but the property was distributed to the child-beneficiary after that date. The change in ownership occurs on the date of death of the parent. C 6/1/90. (M99-1).

625.0075 Disabled Child. The legislative history of this exclusion appears to warrant the conclusion that the \$20,000 income limitation should be applied only to a parent(s) and a disabled child who reside in the same house in the year that the house is transferred to the child. C 10/29/85.

625.0080 Disclaimer. If a survivor spouse disclaims all interest in property left by a deceased spouse and such property passes to a trust for the benefit of the decedent's children, the Revenue and Taxation Code section 63.1 exclusion is applicable even though the trustee has the authority to delay distribution to the beneficiaries. C 2/8/88.

PARENT-CHILD TRANSFER (Contd.)

625.0081 **Disclaimer.** A beneficiary may disclaim any interest in any property, including an interest created under a will, by meeting the requirements set forth in the Probate Code. A properly executed and filed disclaimer results in the interest disclaimed descending and being distributed as though the disclaimant had predeceased the creator of the interest. Thus, the creation of a life estate in a friend and a remainder interest in the children of the creator of the interest would, on disclaimer by the life tenant, qualify as a parent-child transfer. C 5/23/89. (M99–1).

625.0082 **Disclaimer.** The parent-child exclusion may apply in a distribution of property from a father's trust estate to his three children where two children quitclaim their interests. However, an agreement between the children in which the two children receive consideration for disclaiming their interests is not a valid disclaimer and would result in a reassessment of the interests transferred from the two children to the third child. C 10/1/2004. (2005–2).

625.0083 **Domestic Partner.** Family Code section 297.5 provides that registered domestic partners have the same rights, protections, and benefits as are granted to spouses. Because “child” is statutorily defined in Revenue and Taxation Code section 63.1(c) and is not defined by the California Constitution, a child's registered domestic partner is accorded the same treatment as a son-in-law or daughter-in-law under section 63.1(c)(3)(C). Thus, a transfer of real property from a parent to his daughter and her registered domestic partner is eligible for the parent-child exclusion under Revenue and Taxation Code section 63.1. C 3/15/2006. (2008–1).

625.0084 **Estate for Years.** The creation of an estate for years giving Beneficiary X (who is not a spouse or a registered domestic partner, or otherwise eligible for an exclusion) the right to use and occupy the transferor's residence for a period of 34 years is not a change in ownership under Property Tax Rule 462.060(b) since the term is less than 35 years. The termination of the estate for years and the vesting of ownership in someone other than the transferor or the transferor's spouse is a change in ownership, absent an applicable exclusion. If the ownership vests in the children of the transferor, then the parent-child exclusion may be available if a claim is filed. C 3/15/2006. (2007–1).

625.0085 **Foreclosure.** If a child's primary residence was in foreclosure and the child's parents purchased the residence at a foreclosure sale, such a purchase would constitute a “purchase or transfer between parents and their child” under Revenue and Taxation Code section 63.1(c)(1) if, in fact, the sale was made by the child himself or herself and not by an intermediary such as a trustee in the course of a foreclosure sale. C 11/19/2002. (2004–1).

625.0090 **Inheritance.** A testamentary transfer to a child by a parent was held by the court in *Larson v. Duca* (1989) 213 Cal.App.3d 324 to have occurred on the date of distribution of the estate rather than on the date of death for purposes of applying the parent/child exclusion from change in ownership. This was contrary to an opinion issued by Board staff based upon Probate Code section 300.

PARENT-CHILD TRANSFER (Contd.)

Subsequently, Revenue and Taxation Code section 63.1(c)(1) was amended to provide that as of January 1, 1993, transfers between parents and their children under will or by intestate succession are, for change in ownership purposes, made as of the date of the decedent's death, if the decedent died on or after November 6, 1986. C 7/10/87.

625.0100 Internal Revenue Code Exchange. In order to qualify a transfer of real property as a nontaxable Internal Revenue Code section 1031 exchange, Mr. Smith transfers X property to Mr. Jones in exchange for Y property. Immediately thereafter, and pursuant to prior agreement, Mr. Jones transfers X property to Mr. Smith's son. Since Mr. Jones did not have any beneficial use of property X but only the ability to transfer its title to Mr. Smith's son, the transfer to the son qualifies for the parent/child exclusion of Revenue and Taxation Code section 63.1. C 1/23/89.

625.0115 Leases. Husband and wife create a revocable living trust that became irrevocable at husband's death and was subsequently divided into four separate successor trusts. The original trust instrument provides that the wife, as the surviving spouse, becomes the present beneficiary of the successor trusts and that the four children of the husband and wife have remainder interests in the property held by the trusts. Leases of real property held by the trusts for a term of 35 years or longer result in changes in ownership of the property under Revenue and

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Taxation Code section 61(c)(1). However, the lease agreements constitute transfers from the wife, as sole present beneficiary of the trusts, to her children that are eligible for the exclusion from change in ownership pursuant to Revenue and Taxation Code section 63.1, provided all qualifying requirements are met. Additionally, because the lease agreements constitute transfers only from the wife, and not from the husband and wife jointly under the terms of the trust instrument, only the one million dollar limitation for all other real property attributable to the wife is available for those transfers. C 6/25/2004. (2005-1).

625.0120 Life Estate. Transfers to children from the predeceased spouse's (mother's) Marital Trust and surviving spouse's (father's) Survivor's Trust occur on the death of the surviving spouse (father) under Revenue and Taxation Code section 61(g), where the surviving spouse is the lifetime beneficiary of both Trusts. Though mother died before the effective date of the parent-child exclusion, the children held only a future beneficial interest (remainder interest) in the Trusts' properties, until father's life estate terminated and present interests transferred to the remainder persons (children). Since father's death was after the effective date of Proposition 58 (November 6, 1986), the exclusion is applicable to the transfer from each parent. C 6/19/87; C 9/30/93; C 12/16/93. (M99-1).

625.0121 Life Estate. Where a life estate created for the benefit of a child terminates as a result of the death of the child life tenant, the transfer to the surviving children is from the parent/transferor of the remainder interest, not from the life tenant. Since the parent is the transferor, the parent/child exclusion and/or the grandparent/grandchild exclusion may apply to exclude the re-transfer from change in ownership provided that all of the filing requirements are met. C 3/6/2006. (2006-2).

625.0122 Life Estate. The transfer of fee title with a life estate reserved in the transferor is not a change in ownership because it is not the transfer of a present interest in the property. Thus, even though the remainder vests at the time of the transfer, no statutory exclusion from change in ownership is applicable until the remainder becomes possessory.

Where the remainder vests in the transferor's child and spouse, the child and spouse subsequently divorce, and the child transfers his interest to the former spouse, the former spouse may not claim the parent/child exclusion when the remainder becomes possessory because the divorce occurred prior to the remainder becoming a present interest. The person claiming the parent/child exclusion must be a son- or daughter-in-law as of the date of change in ownership. C 8/29/95.

625.0140 One Million Dollar Exclusion Limitation. When real property other than a principal residence is transferred between a parent and a child, but a claim for exclusion pursuant to Revenue and Taxation Code section 63.1 is not filed, that transfer is not cumulated for purposes of applying the one million dollar exclusion limitation. C 4/14/97. (M99-1).

625.0141 One Million Dollar Exclusion Limit. When real properties are transferred between a parent and a child, the deed presumption contained in

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Property Tax Rule 462.200 applies to the issue of the nature of the ownership interests transferred. A child claiming that a parent owned only a portion of the properties transferred rather than 100 percent of them, as indicated by the recorded deeds, and thus, has not used the parent's entire \$1,000,000 exclusion, has the burden of proving that claim to the assessor. The evidence required by Evidence Code section 662 is evidence that is clear and convincing. C 6/17/2002. (2004-1).

625.0142 One Million Dollar Exclusion. Husband and wife create a revocable living trust that became irrevocable at husband's death and was subsequently divided into four separate successor trusts. The original trust instrument provides that the wife, as the surviving spouse, becomes the present beneficiary of the successor trusts and that the four children of the husband and wife have remainder interests in the property held by the trusts. Leases of real property held by the trusts for a term of 35 years or longer result in changes in ownership of the property under Revenue and Taxation Code section 61(c)(1). However, the lease agreements constitute transfers from the wife, as sole present beneficiary of the trusts, to her children that are eligible for the exclusion from change in ownership pursuant to Revenue and Taxation Code section 63.1, provided all qualifying requirements are met. Additionally, because the lease agreements constitute transfers only from the wife, and not from the husband and wife jointly under the terms of the trust instrument, only the one million dollar limitation for all other real property attributable to the wife is available for those transfers. C 6/25/2004. (2005-1).

625.0143 One Million Dollar Exclusion. For purposes of the parent-child exclusion, the full cash value that is applied toward the \$1 million exclusion is the taxable value on the roll immediately prior to the date of transfer to an eligible transferee (i.e., the factored base year value). C 10/1/2004. (2005-2).

625.0144 One Million Dollar Exclusion Limitation—Transfer of Joint Tenant's Interest. Revenue and Taxation Code section 63.1(b)(2) denies the exclusion for the transfer of the first \$1 million of real property other than a principal residence, as defined by subdivision (a)(2), by any joint tenant, with the exception of original transferors, whose property interest was received through a transfer excluded from change in ownership under section 62(f) or section 65(b). Conversely, the transfer of a principal residence, as defined by subdivision (a)(1), by a joint tenant who obtained his or her interest through a transfer excluded from change in ownership under those sections does qualify for the exclusion. C 11/5/2004. (2005-2).

625.0145 One Million Dollar Exclusion. Wife dies and her interest in certain properties is transferred to an irrevocable trust. The trust provides for her husband to receive benefits for life, and their children hold the remainder interests. Upon the husband's death, the wife is deemed the grantor of the remainder estate. Since the wife is considered an eligible transferor of the property, her \$1 million exclusion is available when the irrevocable trust terminates. C 3/29/2006. (2007-1).

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625.0150 Partnership. A transfer from a parent to a partnership owned by the parent and his or her children does not qualify for the parent/child exclusion from change in ownership. The exclusion only applies to transfers to and by natural persons related as required by law. While legislation does look to the beneficial ownership of property held in trust to determine ownership and eligibility for exclusion, a different approach is taken with respect to transfers by and to corporations and partnerships. The latter are treated as separate and apart from their owners, and transfers between or among them are excluded only when the transfers result solely in changes in the manner of holding title to the properties transferred. C 10/23/92.

625.0151 Partnership. Section 2, Chapter 48 of the Statutes of 1987 expressly provided that transfers of real property between eligible transferors (parents) and eligible transferees (children) are excluded from change in ownership when the transfers are immediately followed by a transfer from the eligible transferee(s) to a partnership or other legal entity where the transferee(s) are the sole owner(s) of the entity or are the beneficial owner(s) of the property, if the transfer satisfies the requirements of section 63.1.

Following a parent-child transfer of real property and a subsequent transfer to a legal entity composed of transferee children and parents, such a transfer to the legal entity may fall within the protection of section 2 from application of the step-transaction doctrine, but the conclusion is not free of doubt. C 3/3/95.

625.0152 Partnership. A transfer of partnership property by the partnership to one or more of the partners usually constitutes a change of ownership that requires a reappraisal. However, if the purpose of the transfer is to facilitate a subsequent transfer qualified for the parent/child exclusion contained in Revenue and Taxation Code section 63.1, no reappraisal occurs. C 3/10/92.

625.0153 Partnership. Mother owned real property in which she gave a 10 percent interest to her daughter. Such transfer qualified for the parent/child exclusion under Revenue and Taxation Code section 63.1. Subsequently, mother and daughter transfer their respective interests in the real property to a partnership in exchange for the same proportional ownership interests in the partnership. Such transfer was excluded from change in ownership under Revenue and Taxation Code section 62(a)(2). Thereafter, mother transferred a 50 percent interest in the partnership to her daughter. Since the daughter obtained a majority interest (60 percent) in the partnership as a result of the transfer, the partnership underwent a change in control under Revenue and Taxation Code section 64(c)(1). The transfer of interests in a legal entity does not qualify for the parent/child exclusion because section 63.1 excludes only certain transfers of real property between parents and children. Pursuant to section 63.1(c)(3), real property does not include legal entity interests. C 6/22/2007. (2008–1).

625.0155 Partnership Dissolution—Transfer to Heirs.

1. The dissolution of a partnership due to the death of the partners and the winding up of the partnership by the sole surviving partner does not constitute a change in control/ownership of the partnership under section 64(c).

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2. The parent-child exclusion in section 63.1 is not applicable to the transfer of partnership interests to deceased partners' heirs.

3. Partnership's distribution of interests in real property to deceased partners' heirs may be excluded from change in ownership under section 62(a)(2), providing that the percentages of the property interests transferred are exactly proportionate to the partnership interests held by each heir. C 3/10/94.

625.0156 Partnership Dissolution. Husband (H) and Wife (W) owned a principal residence as community property. H and W transferred the property to a general partnership in which the partnership interests were held by H and W as partners. The partnership agreement did not provide for a continuation of the partnership on the death of a partner. Subsequently, H and W created a revocable living trust. H and W then transferred their respective partnership interests to the trust. Later, W died. Following W's death, the revocable trust became irrevocable (irrevocable trust). H became the sole present beneficiary of the irrevocable trust during his lifetime, and the children of H and W (children) became the remainder beneficiaries. H died. The trust corpus was then distributed to the children.

When W died, the partnership dissolved 90 days after the date of death by operation of law because there was no agreement between H and W that provided for the continuation of the partnership. At that time, H held the real property in the trust indirectly as an individual, not as an interest in a legal entity. Thus, any transfers from the trust that occurred 90 days after W's death were transfers of real property, not partnership interests. When H died, the children became the present beneficial owners of the property held by the irrevocable trust. Since the children were the remainder beneficiaries of the irrevocable trust, the transfers should be treated as coming from H and W (as trustors of the trust). The transfer of the property from the irrevocable trust to the children will qualify for the parent-child exclusion under section 63.1, if all the filing requirements have been met, since it was a transfer of a principal residence from H and W to their children. C 5/16/2007. (2008-1).

625.0158 Possessory Interest. The transfer of a recreation residence, but not the possessory interest in Forest Service land, may qualify as a parent-child transfer. A change in ownership of the possessory interest in the Forest Service land occurs when a new special use permit is issued to the children. C 11/1/96. (M99-1).

625.0160 Principal Residence. The transfer of a principal residence is excluded from the definition of change in ownership if the homeowners' or veterans' exemption has been granted on the property but not if the renters' credit has been allowed. However, the property could be excluded if it is part of the transferred property valued at \$1,000,000 or less. C 10/10/87.

625.0161 Principal Residence. Revenue and Taxation Code section 63.1(b)(1) defines a "principal residence" as including "only that portion of the land underlying the principal residence that consists of an area of reasonable size that is used as a site for the residence." The limitation on the portion of underlying land, "an area of reasonable size that is used as a site for the residence," is a question of fact in each instance to be determined by the assessor. Any portion of

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the land that does not qualify for exclusion as part of the principal residence may be excluded as “other real property of an eligible transferor” under section 63.1 (a)(1). C 9/21/2001. (2003–1).

625.0163 Principal Residence. Revenue and Taxation Code section 63.1(b)(1) provides that a “principal residence” includes only that portion of the land underlying the principal residence that consists of an area of reasonable size that is used as a site for the residence. An area of reasonable size can include multiple contiguous parcels as long as all parcels are part of an economic unit and are not readily severable. Other factors that may be considered include minimum zoning requirements, physical terrain, access, and actual use. C 8/2/2006. (2007–1).

625.0180 Real Property. The parent/child exclusion contained in Revenue and Taxation Code section 63.1 applies only to transfers of real property. It does not apply to transfers of corporate stock, even though such a transfer might result in the indirect ownership/control of corporate real property by the stockholder children. C 10/6/87.

625.0190 Step Transaction. A parent transfers an interest in real property owned by the parent to the parent’s child and, thereafter, they jointly transfer their real property interests to a partnership and acquire the same proportionate interests in the partnership as they held in the real property. The transfer of the real property interest from parent to child qualifies for the parent-child exclusion under Revenue and Taxation Code section 63.1, and the transfers of the real property interests to the partnership would be excluded as proportional interest transfers under Revenue and Taxation Code section 62(a)(2). The transaction is not subject to the step transaction doctrine, based upon the legislative intent language that accompanied the enactment of Revenue and Taxation Code section 63.1. C 11/21/90; C 1/3/91. (M99–1).

625.0191 Step Transaction. Pursuant to specific legislative intent expressed in Chapter 48 of the Statutes of 1987, the step transaction or substance-over-form doctrine shall not be applied to prevent the application of the parent/child exclusion of Revenue and Taxation Code section 63.1 to any transfer that is otherwise eligible for that exclusion. C 7/10/89; C 1/3/91. (Am. M98-2)

625.0192 Step Transaction. Transfers of interests in legal entities, e.g., limited partnerships, by “original coowners” into revocable trusts, irrevocable trustor-transferor beneficiary trusts, or trustor reversion trusts should not be “counted” for Revenue and Taxation Code section 64(d) purposes. The trust exclusion in

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Revenue and Taxation Code section 62(d) takes precedence over transfers by “original coowners” under section 64(d). If the “original coowners” take the extra steps described in the note of legislative intent following Revenue and Taxation Code section 63.1 in order to use the parent/child exclusion, the step transaction doctrine may not be applied to collapse the steps and trigger a change in ownership under section 64(d). C 10/30/96; C 9/29/97. (M99-1).

625.0193 Step Transaction. Judicial decisions have indicated that it is proper to apply the substance-over-form or step transaction doctrine to property transfers that accomplish a change in ownership in multiple steps in an attempt to avoid reappraisal. The doctrine is applicable even if the various steps accomplish a business purpose other than avoidance of increased taxes.

The exception to the general rule is found in the legislative intent language of section 2 of Chapter 48 of the Statutes of 1987 (Revenue and Taxation Code section 63.1), which provides, in substance, that the parent/child exclusion applies to transfers by eligible transferors to eligible transferees even if such transfers are immediately followed by a transfer to a corporation, partnership, trust or other legal entity if the transferee(s) is/are the sole owner(s) of the entity. The Board’s legal staff is of the opinion the same result should follow when an eligible transferor’s parents or children also own interests in the entity. Subsequent transfers of ownership interests among the children or to non-eligible transferees would constitute a change in ownership if one person or entity obtained a majority interest in the entity or if more than 50 percent of the total ownership interests were transferred. C 4/5/88.

625.0194 Step Transaction. If evidence establishes that beneficial ownership of property transfers to children under a written unrecorded contract and only legal title transfers by deed to the partnership, then the deed presumption that the parent is transferring property to the partnership is rebutted. In such case, the transfer may be excluded under Revenue and Taxation Code section 63.1, and the step transaction doctrine would not apply. C 8/22/2000. (2002-1).

625.0196 Step Transaction. The step transaction doctrine is applied when a series of transfers are made merely to avoid reappraisal. However, the step transaction doctrine does not apply to multiple transfers of real property and legal entity interests between parents and children consistent with the legislative intent, expressed in the uncodified note in the bill that enacted Revenue and Taxation Code section 63.1 (section 2 of Chapter 48, Statutes of 1987), that its provisions be liberally construed. C 12/8/2005. (2006-2).

625.0199 Trust Certification. A certification of trust is not sufficient evidence upon which to make a determination of eligibility for the parent-child exclusion if it does not identify the beneficiaries or their interests in the property held in trust. An assessor may require a claimant for the exclusion to either submit the trust instrument or copies of portions of the instrument that identify the beneficiaries and their interests enumerate, the powers of the trustee, and other relevant terms regarding the disposition of the trust property and assets, as a condition of processing and granting the exclusion. C 5/7/2004. (2005-1).

PARENT-CHILD TRANSFER (Contd.)

625.0200 **Trusts.** Revenue and Taxation Code section 63.1 excludes from reappraisal transfers between parents and children, whether outright or by the use of an inter vivos or testamentary trust and whether for or without consideration. Each eligible transferor may exclude a principal residence (no value limits) and \$1,000,000 of other property. C 4/5/88; C 12/14/90.

625.0201 **Trusts.** A trust distribution is within the parent-child exclusion where a trustee's statutory powers are not limited by the trust instrument, the trust instrument requires distribution to children in equal shares, and the trustee encumbers the trust real property after the trustor's death for purposes of distributing the real property to one child subject to the encumbrance and cash in an amount equal to the equity in the real property to the other child. C 9/10/96; C 3/14/2000. (Am. 2000-2).

625.0202 **Trusts.** A married person owning separate property may make his/her spouse a joint owner and thereafter, both spouses may transfer the property to a trust for the benefit of the children of the original owner and thereby qualify the transfer to the children for the parent/child exclusion, regardless of the fact that one of the trustors is a stepparent. This enables the parent and stepparent to combine their separate \$1,000,000 exclusions and jointly transfer the property to the trust without reappraisal. C 2/8/88.

625.0203 **Trusts.** The parent-child exclusion applies to transfers of real property interests into irrevocable trusts that are for the sole benefit of one or more children of the eligible transferor parent, even though the trustee has the discretion to accumulate trust income and principal. C 11/21/90; C 1/3/91. (M99-1).

625.0204 **Trusts.** The transfer of real property to a trust with directions that the trustee withhold distribution of the property and any income it earns until the happening of a specified event, such as the death of the trustor or the reaching of a particular age by the beneficiary, constitutes a transfer of a present interest in the property, and as such, does not prevent the application of the parent-child exclusion, provided that no other person has any intervening right, title, or interest in the property or income of the trust. C 3/23/92. (M99-1).

625.0205 **Trusts.** The transfer date for the application of the parent/child exclusion to property held in a husband/wife revocable trust is the date that the trust becomes irrevocable because of the death of the last parent-trustor. The value to be used in determining whether the \$1,000,000 exclusion amount has been reached is the taxable value of the property shown on the roll for the assessment year in which the transfer occurred. C 7/30/96. (M99-1).

625.0206 **Trusts.** The transfer by a decedent spouse to an irrevocable trust in which the survivor spouse (Wife) is the sole present beneficiary with a limited or special power of appointment of the trust assets enables the children receiving the remainder interests to claim the exclusion on the basis that both parents were transferors (via the trust) upon Wife's death. If the children timely file claims, Husband's \$1 million exclusion could be applied to his property, and Wife's \$1

PARENT-CHILD TRANSFER (Contd.)

million exclusion could be applied to her property, with neither exclusion amount being reduced because of the special power of appointment held by Wife. C 2/4/88; C 8/22/96. (M99-1).

625.0207 Trusts. A transfer of property to an irrevocable trust or to a revocable trust followed by a transfer to a beneficiary who is the child of the trustor(s) can qualify for the parent/child exclusion of Revenue and Taxation Code section 63.1. C 9/4/87.

625.0208 Trusts.

1. A transfer of a vacation residence to an irrevocable trust by a parent trustor for a term of ten years is excluded from change in ownership where the parent trustor retains the present beneficial enjoyment of the vacation residence.

2. The outright transfer to parent's child when the trust terminates after ten years is excluded from change in ownership if child files a timely claim under Revenue and Taxation Code section 63.1.

3. If, alternatively, the property is transferred to a successor trust for the sole benefit of the child until he reaches age 21 instead of outright to the child, such transfer is excluded from change in ownership if child files a timely claim under Revenue and Taxation Code section 63.1. When the child attains the age of 21 and the trustee transfers the property outright to the child there is no change in ownership.

4. Under the terms of the foregoing trust, the property is transferred to parent's estate by the trustee if parent dies prior to the expiration of the ten year term. Although there would be a change in ownership at parent's death unless an exclusion applied, the subsequent transfer to parent's estate by the trustee would not be a change in ownership.

5. If the trustee sells the property to the child during the ten year term, there would be no change in ownership if child files a timely claim under Revenue and Taxation Code section 63.1. C 1/10/96.

625.0209 Trusts. The transfer of property to an irrevocable trust is not a change in ownership if the transferor/settlor is the sole beneficiary of the trust. On termination of the trust, either because of the death of the sole beneficiary or the passage of a time period specified in the trust instrument, a transfer to an "eligible transferee" son or daughter is excluded from change in ownership under Revenue and Taxation Code section 63.1 if all the other requirements for exclusion are met. If the contingent beneficiary son or daughter does not survive the expiration of the trust and the trust assets transfer to the child's estate, the parent/child exclusion is inapplicable. C 9/28/90.

625.0210 Trusts. Husband and wife create a living trust the assets of which are on the death of either transferred to (A) a second living trust (survivors separate property and share of community property), and to (B) an irrevocable trust (deceased spouse's separate property and share of community property). The latter trust declares the survivor to be the income beneficiary for life with the right to have principal used, if necessary, for the reasonable support on

PARENT-CHILD TRANSFER (Contd.)

maintenance of the survivor spouse. The survivor is named a co-trustee of the B trust along with a daughter who is the ultimate beneficiary of both trusts.

Since the power to invade the principal of the trust can be exercised only with the concurrence of the co-trustee daughter who has a substantial interest adverse to the exercise of the power, it is classified by Civil Code Section 1381.2 as a special rather than a general power of appointment. If not exercised or if disclaimed by the holder of the special power, such a power is ineffective and the property subject to appointment passes from the creator of the power to the beneficiary. When a general power of appointment is not exercised, the property passes from the holder of the power to the beneficiary. The difference can be meaningful because of the relationship required and the value limitations of the parent/child exclusion. C 1/21/92.

625.0211 **Trusts.** The case of *Larson v. Duca* (1989), 213 Cal.App.3d 324, applies only to probated estates, not to trusts that become irrevocable because of the death of the trustor. When a trust becomes irrevocable, title to the trust property vests in the beneficiaries, who must satisfy the requirements of Revenue and Taxation Code section 63.1, including the timely filing of the claim within three years of the date of death, in order to receive the benefit of the parent-child exclusion. C 1/14/91. (Am. M99-1).

625.0214 **Trusts.** When parents transfer their property into a trust for the benefit of their children, reserving to themselves the present use of the property for a term of years, there is no reassessable transfer until the trust terminates and the property is distributed to the children as the remainderpersons. The three-year period for filing the parent-child claim commences at the expiration of the parents' estate for years. C 2/28/92; C 12/12/94. (M99-1).

625.0215 **Trusts.** Joint tenants, father and daughter, propose to transfer their interests in a residence to a pre-existing testamentary trust, in which father is the sole income beneficiary for his life and daughter and son are equal remainderpersons. The transfer of father's interest would be excluded from change in ownership under Revenue and Taxation Code section 62(d), and the transfer of daughter's interest would be excluded under Revenue and Taxation Code section 63.1, providing the parent-child claim is timely filed and all requirements are met. Upon father's death, his life estate will terminate, resulting in a change in ownership. The transfer of his 50 percent interest in the trust property to daughter and son could be excludable under section 63.1, the transfer of daughter's 50 percent interest in the trust property to her brother and herself would not be excludable.

If, as an alternative, father purchases daughter's 50 percent interest in the residence, files a parent-child claim, and then transfers that interest together with his own 50 percent interest into the trust, each step would be excludable under section 63.1 and Revenue and Taxation Code section 62(d) respectively. The step transaction doctrine would not be applicable, despite the extra steps, because of the uncodified statement of legislative intent at the end of section 63.1. C 5/27/93. (M99-1).

PARENT-CHILD TRANSFER (Contd.)

625.0216 **Trusts.** Transfers of real property from parents' irrevocable trusts to their children pursuant to the terms of the trusts can qualify for the exclusion of Revenue and Taxation Code section 63.1. When, however, a child elects to receive trust assets other than his or her interest in the property and has that interest distributed to siblings, the interest is transferred from the child, not the parents, and the exclusion is not available. C 2/21/89. (M99-2).

625.0218 **Trusts.** Mother transferred her properties into a testamentary trust, which directed that after her death all income from the properties would be distributed semi-annually to her five sons in equal shares, and that upon each son's death, his beneficial interest would be re-allocated in equal shares to the surviving sons, until only one son remained. Upon the death of the fourth son, the trust ceased, and the trust properties would be distributed one-half to the surviving son and one-half in equal shares to Mother's grandchildren.

Upon the death of each son, his lifetime interest in the trust property terminates and transfers by prior directive of the transferor/Mother to the other surviving sons and, ultimately, to her grandchildren. Since Mother is the transferor, either the parent/child exclusion or the grandparent/grandchild exclusion may apply to exclude each of the transfers from change in ownership provided that all of the requirements of Revenue and Taxation Code section 63.1 are met. C 2/8/99. (M99-2).

625.0220 **Trusts.** A transfer of property to an irrevocable trust which grants a defeasible life estate to some of the trustors' children and a defeasible remainder interest to others qualifies for the parent/child exclusion contained in Revenue and Taxation Code section 63.1. The transfer to the trust may be gratuitous or for consideration and the life estate may be measured by the life of the trustor or one or more of the beneficiaries. C 4/18/88. (Am. 2002-2).

625.0230 **Trusts.** Husband and wife create a testamentary "A/B" trust. Each trust is funded with ½ of the community property and with ½ of the wife's separate property. Upon the death of the first spouse the survivor becomes entitled to all the income from both trusts with a general power of appointment of all the assets in one trust and an annual, non-cumulative, right to receive payment of \$5,000 or 5 percent of the aggregate value of the other. Upon the death of the second spouse all assets are to be administered together and all are to be transferred to their son.

In determining the amount of the \$1,000,000 parent/child exclusion available to each trust, it is necessary to ascertain the parent responsible for the son obtaining a particular property. Since the survivor had a general power appointment in both trusts, that person is considered owner of all property subject to the power. To the extent the power was not exercised and property transferred to the son, said transfer must be regarded as from the holder of the power. Likewise, any property placed in either trust after the death of the first spouse cannot be considered a transfer by that spouse since he/she never owned an interest in the property. C 4/6/92.

PARENT-CHILD TRANSFER (Contd.)

625.0231 **Trusts.** The case of *Larson v. Duca*, 213 Cal.App.3d 324, does not apply to transfers of properties made by trustors or trustees in the course of setting up, administering, or extinguishing trusts. It applies only to probate distributions occurring after November 5, 1986 of properties of persons who died prior to November 5, 1986. LTA 1/10/90 (No. 90/03).

625.0234 **Trusts—Powers of Appointment.** A general power of appointment authorizes the holder to transfer trust assets to himself, his estate, or any person. A special power of appointment limits the persons or entities to whom assets may be transferred.

The transfer of trust property by a parent, who is the sole income beneficiary, pursuant to a general power of appointment to the parent's living trust, in which he is the sole income beneficiary, results in no change in the present beneficial interest in the property. Upon the parent's death, the transfer of the trust property to his children qualifies for the parent-child exclusion as a transfer by the parent, providing a timely claim is filed.

In the case of a related trust in which the parent has a limited power of appointment, a transfer of trust property pursuant to that power to his children would be considered a transfer from the trustor, not the parent; and the parent-child exclusion would apply or not, depending upon the relationship between the trustor and the children. C 12/14/90. (M99–1).

625.0235 **Trusts—Share and Share Alike.** When a parent transfers property to a trust which provides that the children are to receive the trust assets on a share and share alike basis, unless the trust instrument specifies otherwise, the trustee has the power to distribute the property on a pro rata or non-pro rata basis. The distribution of sole ownership of a single asset to one child would qualify for the parent-child exclusion, except to the extent the value of the asset exceeds the value of that child's interest in the total trust estate. Such excess must be considered a non-excludable transfer from the other beneficiaries pursuant to a sale of their interests to the recipient. C 8/6/90; C 9/10/96; C 10/28/99; C 3/14/2000. (Am. M99–1; 2000–2).

625.0235.005 **Trusts—Share and Share Alike.** A trustee who elects to make a non pro rata distribution of trust real property to one beneficiary may equalize the value of the other beneficiaries' interests in the trust assets by encumbering the real property with a loan and distributing the loan proceeds to the other beneficiaries. If the beneficiary of the real property is the trustor's child, then the parent-child exclusion would be applicable to the full extent of the value of the real property provided all other statutory requirements are met. However, a loan made by the beneficiary of the real property rather than the trustee in order to equalize the trust interests would be considered payment for the other beneficiaries' interests in the real property resulting in a transfer between beneficiaries. In that event, the parent-child exclusion would not apply to the interests transferred between beneficiaries. C 8/4/2003; 9/5/2007. (2004–1; Am. 2008–1).

PARENT-CHILD TRANSFER (Contd.)

625.0235.010 Trusts—Share and Share Alike. Upon a distribution of real property under the terms of an irrevocable trust, a key in determining if a change in ownership occurs is whether the trust instrument limits the trustee's power to distribute property. If the trust instrument allows one child to purchase real property interests from his/her siblings, this option restricts the trustee's power to distribute on a non pro-rata basis. Such purchase from the other beneficiaries does not qualify for the parent-child exclusion. C 7/25/2006. (2007-1).

625.0235.015 Trusts—Share and Share Alike. If a trustee of a trust has the discretion to make non-pro rata distributions of trust property, the trustee is not legally required to distribute equal interest in a residence to each beneficiary so long as the trustee adjusts the distributions that are made so that each beneficiary receives property of equal value. However, the parent-child exclusion will not apply to the percentage ownership interest in the property in excess of a beneficiary's pro rata interest because it was received as a result of a transfer between siblings, not a transfer from a parent to children. Thus, it will be subject to reassessment. C 5/16/2007. (2008-1).

625.0236 Trusts—Sprinkle or Spray Power. A "sprinkle or spray power" is a provision which gives the trustee total discretion to distribute trust income or property to a number of potential beneficiaries. When a trust contains a sprinkle or spray provision, to avoid a change in ownership and reassessment, all of the persons included as beneficiaries under that provision must have an exclusion. If even one person included as a beneficiary is not excludable, then 100 percent of the trust property is subject to change in ownership. C 7/18/2001. (2003-1).

625.0240 Veterans. Under "The Veterans Farm and Home Purchase Act of 1974", the Department of Veteran Affairs is authorized to obtain property which it sells to veterans by contracts of sale. Although the Department obtains legal title to the property and holds it as security for payment of the contract purchase price, the vendee veteran is the owner for all purposes (*Eisley v. Mohan* (1948) 31 Cal.2d 637).

When the Department purchases property from the parent of the vendee veteran for the purpose of selling it to the veteran, the parent/child exclusion applies to the transfer to the child provided all other exclusion requirements are met. C 9/19/88.

625.0250 Wills. Where real property is transferred by will from a parent to her son provided the son pays a specified sum of money to his sister, an equitable charge is created giving the sister a security interest in the real property but not a beneficial interest. The son, therefore, receives the entire present beneficial interest in the real property from his parent for purposes of the parent/child exclusion and no ownership interest in the property is acquired from his sister. C 2/14/95.

625.0251 Wills. Mother's will granted the executor the authority to sell real property and also granted broad discretion in distributing property in kind on a pro rata or non-pro rata basis. Following the decedent's death, the Superior Court

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specified the method by which distribution of her assets would occur. The court ordered the executor to sell three-fourths of the real property interests to one beneficiary and to distribute the proceeds of the sale to the other three beneficiaries. Since the court ordered this method of equalizing the real property shares to be distributed among the four children, the beneficiary's purchase of the property interests was not from his siblings. Thus, the parent-child exclusion would apply to exclude the entire value of the real property. C 3/10/2005. (2006-1).

PENAL ASSESSMENT

See Assessment Appeals Board
Private Railroad Car Tax

630.0000 PERSONAL PROPERTY

See Assessee

Business Inventory Exemption

Construction Equipment

Improvements Valuation

Insurance Companies

Retirement Systems (Public) Property

630.0001 Community Care Facility. The prohibitions in the Health and Safety Code against local licenses, fees, or taxes for the privilege of operating a care facility serving six or fewer persons are not applicable to property taxes imposed upon either real or personal property pursuant to section 1 of article XIII of the California Constitution or the Revenue and Taxation Code. C 9/16/87.

630.0005 Electronic Data Equipment. The California Supreme Court held in *Crocker National Bank v. City and County of San Francisco*, 49 Cal.3d 881, that general purpose electronic data processing equipment are personalty and do not constitute fixtures, even when placed in a building planned and constructed as a data processing center with safety, security, cooling, power, and fire suppression systems designed into the building. This opinion continues the judicial trend of rejecting a broad definition of fixtures and restricting it to items which become permanent additions to real estate.

The proper classification of this kind of property presents a mixed question of fact and law that must receive the independent review of the court. The more usual substantial evidence test for reviewing assessors' or assessment appeals boards' actions is inapplicable. LTA 1/29/90 (No. 90/07).

630.0010 Federal Contract. Where the title clause of a federal government contract specifies that upon the contractor's procurement of personalty the title thereof vests and remains in the United States until disposition, the personalty is exempt from ad valorem property taxation notwithstanding its actual use or employment. C 3/4/94.

630.0011 Foreign Trade Zones. While section 81(o), subsection (e) of Title 19 of the United States Code Annotated (Customs Code) exempts tangible personal property from state and local ad valorem taxation when held for certain purposes in a foreign trade zone, it does not apply to property that is imported for use (for manufacturing and like uses) within a foreign trade zone. C 1/12/99. (2000-1),

630.0020 Insurance Company Property. The California Supreme Court held in *Mutual Life Insurance of New York v. City of Los Angeles*, 50 Cal.3d 402, that personal property owned by insurance companies is exempt from property taxation regardless of whether or not the property is used for insurance related business. LTA 5/17/90 (No. 90/40).

630.0022 Leased to Government. Absent an applicable exemption, property on the unsecured roll may be assessed to both the lessee and lessor pursuant to Revenue and Taxation Code section 405. Where the lessee is immune from state and local property taxation, the lessor thereby becomes the sole assessee and the person solely responsible for applicable property taxes. The fact that the property

PERSONAL PROPERTY (Contd.)

is leased by a tax exempt entity does not exempt the property itself from state or local property taxes. However, a lessee under a direct financing lease agreement is considered the “true owner” of the property because the lessor retains legal title only for security reasons. Thus, property subject to such a lease agreement is tax exempt if the lessee is immune from property taxation. In determining whether an agreement constitutes a direct financing lease, the parties’ intent, as manifested by the lease terms, is controlling. C 10/14/98; C 8/11/2003. (2000–1; Am. 2004–1).

630.0023 Leased to Government. Under a “lease to ownership plan” or a direct financing lease, the federal government lessee is considered to be the owner of the personal property if the federal government has exclusive management, responsibility, and control, and must reimburse lessor for applicable sales taxes, use and gross receipts taxes, and personal property taxes. Even though the leased property is immune from property taxes, the private lessor is responsible for filing business property statements for the property under Revenue and Taxation Code section 442(c), unless the property is specifically exempted. C 12/23/2004. (2005–2).

630.0024 Penalties. Penalties should be imposed only to the extent that a taxpayer’s action has caused some amount of tax not to accrue to the taxing jurisdiction. Thus, an assessment should be reduced by the allowable amount of the exemption prior to computation of the 10 percent penalty required under Revenue and Taxation Code section 463. If the subtraction of the exemption from the gross assessed value is zero, then no penalty would be applicable. However, if the assessed value of the property exceeds the amount of the exemption, then the 10 percent penalty would be assessed on the value of that property for which an exemption is not available. For property that qualifies for one of the exemptions enumerated in Revenue and Taxation Code section 270 but for which a claim is untimely filed as provided by that section, the amount of the tax, interest, and penalty may not exceed \$250. C 12/30/98. (2000–1).

630.0025 Plastic Sheets Covering Strawberry Fields. Plastic sheets used to cover strawberry fields for the nine-month growing season are not assessable to the grower for property tax purposes if they are acquired after the lien date and disposed of before December 31. While the plastic sheets are physically attached to the ground, they are temporary and impermanent. Thus, an objective observer would not consider them to be permanently annexed to the realty. Therefore, the plastic sheets should be treated as personal property for property tax purposes. C 6/25/98. (2000–1).

630.0030 Retirement Systems. Personal property owned by retirement systems, other than governmental retirement systems, is taxable. Thus, personal property of union retirement systems, pension funds, and private retirement systems is taxable. And while personal property of banks and insurance companies is not taxable, if a bank or an insurance company sets up a separate corporation to operate its retirement system, the corporation’s personal property is taxable. LTA 3/6/78 (No. 78/34).

PERSONAL PROPERTY (Contd.)

630.0040 **Situs.** Where a linen supply company is operating totally intrastate, Property Tax Rule 205 (a) indicates that situs is the place where the linen is returned for cleaning. It is not correct to assess the average amount of linen supplies in a county even though the linen is returned to a business location in another county for cleaning. Assessing movable property on the basis of “average presence” has been upheld by the courts where two or more states were involved; however, situs must be determined under Rule 205 (a) where the movement is solely between counties within this state. LTA 4/16/79 (No. 79/75).

630.0043 **Trailers Licensed in Oregon.** Commercial trailers that are issued permanent valid identification plates under Vehicle Code section 5014.1 are exempt from property taxation pursuant to Revenue and Taxation Code section 225, subdivision (a). Section 5014.1 was added as part of an enactment by which California entered into the International Registration Plan agreement, a reciprocity registration agreement to facilitate commercial vehicle registration and operation and provide a uniform system for the allocation and collection of commercial vehicle operating fees among the 48 contiguous states, the District of Columbia and three Canadian provinces. The agreement provides that commercial trailers registered and licensed in one of those jurisdictions is exempt from registration and licensing requirements and fees in any of the other jurisdictions. Thus, under Vehicle Code section 6852, commercial trailers registered in Oregon are accorded the same privileges as trailers registered in California under section 5014.1, including the exemption from property taxation. C 11/17/2004. (2005-2).

630.0045 **Valuation.** The inclusion of sales tax in cost-based indicators used to value personal property held at the consumer level for property tax purposes is both required under appraisal theory and consistent with generally accepted accounting principles. It is supported by case law and violates neither the prohibition against double taxation nor general principles of valuation and appraisal. C 4/19/99. (2000-1).

630.0046 **Valuation.** If a new business in California received an exemption of the state portion of the sales tax on the purchase of manufacturing equipment pursuant to Revenue and Taxation Code section 6377, sales tax should be included as a component of cost as the exemption is not available to all similar consumers of that equipment at a similar trade level. On the other hand, when the Legislature has enacted a statutory sales tax exemption for a specific type of equipment, sold at a similar trade level, sales tax should not be included as a component of cost. C 4/11/2002. (2003-1).

630.0047 **Valuation.** While the costs necessary to transport equipment to its ultimate location of use must be capitalized, any subsequent or additional transportation costs to return the equipment for repair should not be capitalized. Such costs are beyond that necessary to place the property in service and, thus, should not be included in the value indicator when applying a cost-based valuation methodology. C 6/6/2002. (2004-1).

PERSONAL PROPERTY (Contd.)

630.0049 Valuation of Leased Property. Property Tax Rule 10(d) provides that, when property is leased for a period of more than six months, the property should be valued at the fair market value price that a customer at the same trade level as the lessee would pay to purchase the property. Property Tax Rule 10(b) describes the concept of full economic cost, under which a price would be adjusted for any quantity price discount that would be appropriate for a customer at the lessee's trade level. However, a lessor must demonstrate that the particular lessee of its property is leasing more than one item of property, in order for an assessor to consider a quantity discount when determining the full economic cost of the property to the lessee. C 3/25/2003. (2004-1).

630.0050 Valuation Tables for Computers. The Board has approved valuation tables for personal computers (small computers whose historic cost is \$24,999 or less) and for mainframe computers (large computers whose historic cost is \$500,000 or more) for use for the March 1, 1996 lien date. The valuation factors therein were developed by analyzing resale values of personal and mainframe computers as compared to original costs; and they are intended to be applied directly to historical costs of non-production computers, computers, including related equipment, designed for general business purposes. Non-production computers do not include computers embedded in machinery and do not include equipment or computers specifically designed for use in any other application directly related to manufacturing. LTA 3/6/96 (No. 96/19).

630.0060 Vehicles—Mounted Equipment. Under Revenue and Taxation Code section 10751, vehicles subject to registration are assessed the vehicle license fee (VLF) in lieu of ad valorem taxation. New equipment permanently mounted on such vehicles must be reported to the Department of Motor Vehicles (DMV) so that the DMV can adjust the value on which the VLF is based. Such provisions preempt the enrollment of any locally-assessed property taxes on these vehicles. C 5/31/2007. (2008-1).

640.0000 PETS EXEMPTION

See Business Inventory Exemption

640.0001 Pets, Defined. The term “pets” (e.g., fish, birds, insects, cats, dogs, horses) means and includes any animal held for noncommercial purposes and not as an investment. The term does not include animals held or used in connection with a trade, profession or business. The following criteria may be used in determining if an animal is held for commercial purposes and, therefore, is subject to ad valorem taxation:

1. Is the animal held or used in connection with a trade, profession or business of the owner? One indication of this is the owner taking animal related depreciation or expense deductions on his income tax returns.
2. Is the animal used in the production of offspring which are sold for an amount in excess of the expense of breeding and raising them to a marketable age?

PETS EXEMPTION (Contd.)

3. Has the animal's proficiency gained monetary or other awards of substantial value?

If the answer to any of these questions is affirmative, then the animal should be considered held for commercial purposes. LTA 5/22/78 (No. 78/88).

650.0000 PLANNED DEVELOPMENTS

650.0001 **Recreation Common Areas.** The tennis courts, beach, and picnic area of a lake country club, organized as a planned development, are common areas.

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PLANNED DEVELOPMENTS (Contd.)

The values or interests held in these common areas should therefore be reflected in the separately owned lots, parcels or areas.

A mutual water company, serving only the planned development, should also be valued pursuant to Revenue and Taxation Code Section 2188.5. C 4/12/78.

660.0000 POSSESSORY INTEREST

See Change in Ownership

Indians and Indian Lands

Lands Owned by Local Governments That Are Outside Their Boundaries

Mines and Minerals

State-Assessed Property

Welfare Exemption

660.0001 Acquisition by Exempt Entity. Upon an exempt entity's acquisition of a nonexempt entity's possessory interest in property, property taxes paid on the possessory interest must be apportioned and that portion that is allocable to the part of the fiscal year that begins on the date of apportionment must be refunded. C 5/9/88.

660.0008 Air Rights. Air rights constitute land as defined in Civil Code Section 659 and as classified by Property Tax Rule 124. When such rights are leased by a governmental entity to a private person or entity, a taxable possessory interest is created, which results in a change in ownership. C 4/28/86.

660.0015 Aircraft Tie-Downs and Boat Berths. A relocation of an aircraft tie-down or a boat berth is not a change in ownership of a taxable possessory interest. LTA 10/10/79 (No. 79/182).

660.0018 Analysis of Requirements—Satellite Wagering. In determining the existence of a taxable possessory interest under a written instrument, an objective standard rather than the literal language of the written instrument controls in ascertaining the nature of the relationship established. Because of the variety of interests that may be created by written instruments, the question of whether a taxable possessory interest has been created must be decided on a case-by-case basis by considering the factors of durability, exclusiveness, private benefit and independence. In each case, judgment is to be made by examination of the writing in its entirety.

Review of the written instrument presented concerning the operation of satellite wagering at the Sonoma County Fairgrounds in the light of the above enumerated factors leads to the conclusion that a taxable possessory interest has been created. C 8/31/93.

660.0025 Blind Vendors. No taxable possessory interests exist in the use of public buildings by blind vendors who operate vending facilities therein. A mere license to operate a vending facility is not a possessory interest. LTA 3/21/80 (No. 80/48).

660.0034 Cable Television Franchise Fee. Section 107.7 does not require that the assessor use a portion of the franchise fee as the estimated economic rent for

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a cable system taxable possessory interest. Subdivision (b)(2) provides that the annual rent must be either (1) that portion of the franchise fee received by the franchising authority that is determined to be payment for the cable television possessory interest or (2) the appropriate economic rent. If the assessor does not use a portion of the franchise fee as the economic rent, the resulting assessment does not benefit from any presumption of correctness.

Other than that provided in section 107.7, there is no legal connection between the franchise fee and the economic rent for a cable system taxable possessory interest. The federal limit on cable television franchise fees does not establish a limit on the economic rent of a cable system taxable possessory interest. Similarly, neither does the state limit on such fees establish a limit on the economic rent.

In addition, a cable television franchise fee is not an enforceable land use restriction under section 402.1. Section 402.1(a) requires an assessor to consider the effect upon value of any enforceable restriction to which the use of the land may be subjected. The federal and state limits on cable television franchise fees are limits upon amounts which may be charged for cable television franchises, not restrictions to which uses of lands are subjected. C 7/13/2005. (2006–2).

660.0035 Cable Television Franchises. A cable television franchisee has a taxable possessory interest in properties his system utilizes, including shared conduits running under publicly-dedicated street rights-of-way and containing television cables as well as other utility lines. C 2/3/82.

660.0045 Campgrounds. A United States Forest Service permit holder authorized to operate Forest Service campgrounds and collect fees and expected to keep the grounds and facilities clean and to maintain a high level of service to the public has a taxable possessory interest in federal lands to which the permit pertains. LTA 6/12/86 (No. 86/42).

660.0050 City Electrical System. The hiring by a city of an operator to manage, operate, and maintain the city's electrical system, to bill and collect from the customers, and to obtain the power needed to make the system function does not create a taxable possessory interest if the city retains ownership and control of the system and the operator acts only as an agent for the city's benefit. C 1/13/89.

660.0060 Commercial Use of Military Property. A contractor's right to erect and operate a fast-food outlet on a Marine Corps Base constitutes a taxable possessory interest if the right is durable, exclusive, conveys private benefit, and is sufficiently free of military control to prevent the creation of a principal-agent relationship. The existence or nonexistence of the noted characteristics establishing possessory interests are to be determined by the documents executed by the parties and the actual operation of the facility. C 12/18/85.

660.0064 Commercial Use of State College Property. A nonexempt entity's leasing and commercial use of property owned by a State college (university) constitutes a taxable possessory interest. C 6/26/80.

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- 660.0068 **Conservation Easement.** Conservation easements create taxable possessory interests in government-owned land only if they confer actual physical occupation or the right to actual physical occupation on the holder of the easement, meet the requirements of independence, exclusivity, durability, and private benefit, as defined in Property Tax Rule 20, and confer a private benefit on the possessor not available to the general public. An easement that merely grants the right to enter the property to monitor compliance with the terms of the easement does not confer actual physical occupation of the property. C 8/6/2003. (2004–1).
- 660.0070 **Construction and Use of Landfills.** A contractor's construction of landfills and performance of landfill operations does not constitute a taxable possessory interest where its right to use county land is not sufficiently independent of county control and its use of the land is not for its benefit but for the benefit of the county. C 6/5/85.
- 660.0075 **Effective Date.** In 1985, Company E leased a terminal owned by the City of Los Angeles until March 2003. In 1998, Company E executed another lease agreement that took effect on November 16, 2001, for the same real property plus additional acreage. The second lease provided that, upon execution, the first lease terminated. The second lease did not renew or extend the possessory interest created by the first lease, but rather the second lease created

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a new possessory interest resulting in a change in ownership on the effective date of the second lease, November 16, 2001, and not on the original termination date of the first lease. C 1/25/2005. (2005-2).

660.0080 **Easement.** A developer's retention or acceptance of an easement in city property to develop and construct a marina and boat berths as part of a housing development constitutes a taxable possessory interest. C 8/12/88.

660.0090 **Federal Credit Union.** Title 12 of the United States Code, Banks and Banking, Section 1768 subjects real property of federal credit unions to local taxation to the same extent as other similar property, including possessory interest assessments. C 5/23/85.

660.0091 **Federal Enclaves.** A federal enclave is property over which the federal government holds exclusive jurisdiction. While possessory interests held by lessees or other users of federal property are generally taxable, those possessory interests held by lessees or other users of property within a federal enclave are not. If military property was ceded after 1939 with the limitation of Government Code section 126(e) or its predecessor, reserving the power of local taxation, any possessory interest held in such property would be a taxable possessory interest. If, on the other hand, military property was ceded prior to 1939, then, in the absence of express congressional authorization, any possessory interest would not be taxable; it would be immune from local property taxation. C 4/2/98. (M99-2).

660.0092 **Federal Property.** Privately held possessory interests in real property located within the Presidio of San Francisco—formerly a United States military base, now a part of the Golden Gate National Recreation Area and the National Park Service—are exempt from state and local property taxation because Congress has enacted legislation specifically precluding the assessment and taxation of such interests. C 1/30/2002. (2003-1).

660.0095 **Foreign Nation Real Property.** Real property located in California but owned by a foreign nation may be immune from property tax pursuant to treaty or other agreement executed by the United States and the foreign nation. In each instance, the treaty or agreement must be examined to ascertain whether or not immunity has been granted.

Pursuant to the Taiwan Relations Act, Public Law 96-8 of April 10, 1979, the real property of the Coordination Council for North American Affairs (a Taiwan instrumentality) is immune from property tax. C 1/27/92.

660.0098 **Forest Service Land.** The purported transfer of a possessory interest in United States Forest Service land by grant deed is ineffective when the possessory interest was created by a nontransferable government special use permit. Nevertheless, the grant deed is effective to transfer a recreational residence located on the land, to which any available exclusions may apply. When the transferee obtains a new special use permit from the United States Forest Service, however, a new taxable possessory interest in the land will be

POSSESSORY INTEREST (Contd.)

created for the benefit of the transferee, and that possessory interest will result in a change in ownership under Revenue and Taxation Code section 61(b). C 11/1/96. (M99–1; Am. M99–2).

660.0100 Government Fixture on Private-Owned Land. In *United States v. San Diego County* (1992) 965 F.2d 691, the court held that a federally owned nuclear fusion research device located on private property and maintained and operated by a private scientific research firm was a fixture (improvement) in which the operator had a taxable possessory interest. The operator was reimbursed for its costs and it was paid an annual fee, and it had a beneficial interest in the device. While the government had ultimate control of the device, the operator had routine control and supervision of it. Contractual conditions that limited the operator's use of the device pertained to the value of the operator's interest, not to the device's taxability. C 6/9/92.

660.0104 Hospital Medical Office Space. A physician entered into a contract with a government-owned hospital to practice medicine at the hospital and provide prescribed on-call, clinic, and emergency room medical services. In return, the physician received an office, staff, billing services, and a minimum monthly compensation guarantee.

The possessory rights granted to a staff physician in a hospital pursuant to an independent contractor agreement may be both durable and exclusive; but if the physician/possessor is the agent of the governmental owner, the possession lacks the necessary quality of independence required in order for there to be a taxable possessory interest. C 1/31/2001. (2003–1).

660.0105 Hospital Operator. Where a city-owned hospital is operated by a private contractor-health service company pursuant to a contract granting it operational independence and a share in the net operating income, a taxable possessory interest is created. In each instance in which a private person or entity has the use of exempt government-owned property, the agreement for use must be examined to determine the exclusivity, independence, durability and private benefit conferred upon the operator. Only if the governmental entity retains sufficient control of the operator may the operator be considered an agent of the governmental entity and benefit from the entity's exempt status. C 2/24/89.

660.0115 Houseboats. A United States Forest Service permit holder has a taxable possessory interest in federal lands to which the permit pertains, but its right to lease houseboats on a lake on such lands is incidental to that interest/use under the permit and its leasing of houseboats thereunder does not create additional taxable possessory interests. C 1/21/83.

660.0120 Improvements Constructed on Federal Land. If a lessee (or permittee) of federal land constructs improvements thereon and retains ownership of a fee simple or life estate in the improvements, he does not have a taxable possessory interest in the improvements. If the improvements become the property of the government, however, the lessee has a taxable possessory interest therein. C 9/27/84.

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- 660.0130 **Lease.** A city's lease and leaseback of land to a nonprofit, public-benefit corporation established by the League of California Cities to assist its members in financing capital projects creates a taxable possessory interest in the corporation. C 9/30/87.
- 660.0131 **Lease.** When taxable real property is purchased by a tax-exempt governmental entity, pre-existing leases become taxable as possessory interests if they satisfy the requirements of Property Tax Rule 21. Any renewal, extension, sublease, or assignment of such a possessory interest is a change in ownership, regardless of the term of possession remaining under the lease; whereas, transfers of leasehold interests in taxable real properties constitute changes in ownership depending on the terms of possession remaining, as provided in Revenue and Taxation Code Section 61(c)(1) and (2). LTA 1/6/83 (No. 83/03); C 8/9/91.
- 660.0132 **Lease.** The lease and lease-back of city-owned property to a nonprofit public benefit corporation may create a taxable possessory interest in the corporation. Property tax may be avoided if the corporation meets the requirements of Revenue and Taxation Code Section 231. C 9/9/87.
- 660.0133 **Lease.** When a nontaxable public entity leases real property to a nonprofit public benefit corporation, and the public entity created and owns the non-profit corporation, a taxable possessory interest is created as to all portions of the property not subject to pre-existing leases to third parties. Nevertheless, since the lessee corporation is wholly-owned by the lessor, the transfer is excluded from change-in-ownership under Revenue and Taxation Code section 62(a)(2). The possessory interest must be assessed at its base year value prior to the creation of the new leasehold interest, adjusted for the lesser of inflation or market value in accordance with Revenue and Taxation Code section 51. The value of the possessory interest does not, however, include the value of pre-existing leases to third parties. The pre-existing leases to third parties will themselves continue to be taxable as possessory interests unless specifically exempted by other statutory provisions, and may be separately assessed. C 11/17/92. (M99-1).
- 660.0142 **Lease and Leaseback.** A lease and leaseback of property owned by a governmental agency creates a taxable possessory interest which may be eligible for exemption pursuant to Revenue and Taxation Code Section 231. However, the exemption does not apply to the possessory interest if the property is vacant and unused on any given lien date. C 9/30/87.
- 660.0145 **Leased Property Acquired by Exempt Entity.** A public retirement system purchased property from a private party subject to an existing lease. The leasehold interest becomes a separately assessable taxable possessory interest; however, for purposes of valuing the possessory interest, the purchase is not considered the creation of a taxable possessory interest resulting in a change in ownership for purposes of Revenue and Taxation Code section 61(b) requiring each taxable possessory interest created to be appraised at current market value. If and when the purchaser negotiates renewals of leases or enters into new leases, a change in ownership requiring reappraisal would occur. C 4/29/96. (M99-1).

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660.0150 Local Governmental Entity of Another State. An irrigation district of another state has a taxable possessory interest in a reservoir owned by the Federal Government in California its water distribution system uses. The property of such an entity in California is not exempt from property taxation. C 5/7/80.

660.0159 Marine Salvage Permit. Property Tax Rule 20(c)(1) defines “real property” to include not only land (presumably including submerged land) but also “public waters such as tidelands and navigable waters and waterways.” A taxable possessory interest is created in favor of the permittee if the terms of the salvage permit meet the definitions of independence, durability, and exclusiveness, and in addition, provide a private benefit to the possessor. C 9/29/99. (2001–1).

660.0160 Maritime Terminal Facilities. In *Euro-Pacific v. Alameda County* (1992) 11 Cal.App.4th 891, the court held that a contract between a company operating container vessels and a port district, pursuant to which the company could use the district’s terminal facility on a first-come, first-served basis, without a right to use it if other vessels were then using it, and without a right to move ahead of other waiting users, and requiring the company to vacate a berth if its vessel were idle and another company’s vessel were waiting, created a taxable possessory interest.

The company’s right was concurrent with the rights of others. That the concurrent use by others might interfere with its right was held to be relevant to the value of the interest, but it did not alter the fact that a possessory interest existed. C 12/23/92.

660.0170 Military Housing. Property owned by the United States is not subject to property taxation by the state within which it is located, unless the United States consents to such taxation. Additionally, in *United States v. Humboldt County* (1980) 628 F.2d 549, the court held that military personnel do not acquire taxable possessory interests in government-owned military housing, and that had such possessory interests been acquired, taxation thereof would be constitutionally impermissible as taxation upon federal functions and properties. C 4/2/87.

660.0171 Military Housing. Residential housing constructed and owned by a private contractor but located on Navy-owned land results in a taxable possessory interest in the land. If the agreement between the contractor and the Navy puts restrictions on the use of the residences and the rentals to be charged, however, such restrictions could be considered to be governmental land use restrictions pursuant to Revenue and Taxation Code section 402.1, and thus could impact the taxable value of the property. C 6/11/91. (M99–1).

660.0172 Military Privatization Housing. Under the Department of the Army’s Residential Communities Initiative (RCI) program, the federal government and a private contractor created a limited liability company (LLC) to finance, design, construct, manage, operate, and repair military family housing. Under

POSSESSORY INTEREST (Contd.)

the operating agreement, the federal government leased federal land with existing military housing to the LLC for a 50-year term; the LLC provided property management, maintenance, and operation services for a military residential development; and, the LLC will construct new housing units on the land.

The elements of control exercised by the federal government pursuant to the lease and operating agreement made the LLC an agent of the federal government. The LLC's use and occupancy of the land lacked the degree of independence sufficient to constitute a taxable possessory interest. Therefore, for property tax purposes, ownership of the property remains in the federal government so the property is immune from property taxation. C 4/18/2003. (2004–1).

660.0175 Modification of Lease. The modification of a lease that renews, extends, or assigns the possessory interest created by the lease results in a change in ownership. However, the restatement into a new format and the addition of an option to extend the term of the lease are not such modifications. When dealing with options to extend the term of a lease, possessory interests are treated differently than options included in leases that do not create possessory interests. In the former, the option must be exercised to constitute a change in ownership, whereas in the latter, options are taken into account in determining whether or not the lease is for a term of 35 years or more. C 3/14/97. (2001–1).

660.0180 Municipal Parking Garage. Easements granted to the owners of property adjacent to a municipal parking facility that allow employees and business invitees of the property owners and their tenants to use the garage can constitute taxable possessory interests. The fact that the garage is open to the general public does not prevent the adjacent landowners' use from satisfying the durability, independence, exclusivity, and private benefit tests. C 4/10/89.

660.0185 Oil and Gas Leases in Tax Exempt Properties. Revenue and Taxation Code sections 107.2 and 107.3 and subdivision (b) of Property Tax Rule 27 apply to the valuation of oil and gas possessory interests created on or before July 26, 1963, and extended or renewed after that date pursuant to Public Resources Code section 6827, which prohibits a reduction of the royalty rate. Public Resources Code section 6827.2, which authorizes the State Lands Commission to renegotiate the lease including the royalty rate if continued production is economically unfeasible under the terms of the lease, is not applicable since that section was enacted after the lease was last extended or renewed and, even if it had been in effect, there is no indication that an increase in assessed value would result in a finding by the Commission that continued economic production would be economically unfeasible. C 7/21/92. (M99–1).

660.0190 Option to Lease. Execution of an option to lease property from the University of California does not create a taxable possessory interest. Such an instrument is merely an irrevocable offer to lease the property which remains open for a specified period of time, and normally, no rights to possession or exclusive use come into existence until the option is exercised. C 2/6/85.

660.0200 Option to Renew. The granting of an option to renew an existing possessory interest creates only a contractual right and is not within the definition

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of change in ownership. The exercise of such an option would be a change in ownership as of the date the option is exercised. LTA 6/13/88 (No. 88/41).

660.0210 Public Electrical System. The operation of a government-owned electrical system by a private party can be pursuant to a principal and agent relationship or as the result of the creation of a taxable possessory interest. The contract creating the relationship must be reviewed to determine whether the private party has sufficient independent rights or interests in the use, possession, and enjoyment of the government property to elevate those rights or interests to a proprietary right subject to assessment as a taxable possessory interest. C 1/13/89. (M99–1).

660.0220 Public Schools Concessionaires. Property used by concessionaires exclusively for providing food service to public schools, community colleges, state colleges, and state universities is exempt from property taxation under section 3(d) of article XIII of the California Constitution and hence, such concessionaires do not have taxable possessory interests. LTA 3/21/80 (No. 80/48).

660.0225 Public Schools—Student Housing. A fifty-year lease of land owned by the University of California to a lessee who is to construct and operate a 200-unit student family housing apartment complex creates a possessory interest that would be taxable, except for the provisions of section 3(d) of article XIII of the California Constitution. That provision exempts property used exclusively for public schools, community colleges, state colleges, and state universities.

Upon the basis of the reasoning in such cases as *Mann v. Alameda County* (1978) 85 Cal.App.3d 505, *Church Divinity School v. Alameda County* (1957) 152 Cal.App.2d 496, and *English v. Alameda County* (1977) 70 Cal.App.3d 226, the property is being used exclusively for University purposes so long as any given unit is subleased to a student, faculty member, or staff member of the University, even though the lessee is a for-profit entity. C 1/13/88; C 8/30/2002. (Am. 2004–1).

660.0230 Purchase Price Presumption. While the presumption contained in Revenue and Taxation Code Section 110(b) does not apply in valuing possessory interest, there is nothing in the section or elsewhere that would preclude consideration of the purchase price paid for a possessory interest in ascertaining its market value. C 5/10/89.

660.0240 Redevelopment Projects. Where an office building in a redevelopment project has been redeveloped and a portion is leased by the redevelopment agency to a private person or entity, Health and Safety Code section 33673 requires that the leased portion be assessed and taxed in the same manner as privately-owned property. The requirement means that the lessee shall pay taxes on the market value of the entire leasehold estate based on its highest and best use within the terms of the lease. C 4/14/98. (2000–1).

660.0245 Refuse Collection. The collection, pursuant to contract, of garbage, rubbish, garden refuse, and all other waste material within a city, but without the

POSSESSORY INTEREST (Contd.)

use of the city's real property in the collection or disposal thereof, does not result in the creation of a taxable possessory interest. C 1/13/89.

660.0260 Sale and Leaseback. When the terms of a sale and leaseback agreement indicate that a governmental agency has entered a financial transaction designed to provide funds for the building of a county facility and the agreement is not a true sale, the county retains ownership and the "lessee" obtains a possessory interest. If the "lessee" is not qualified for exemption under Revenue and Taxation Code Section 231, the possessory interest becomes taxable. See *City of Desert Hot Springs v. Riverside County* (1979) 91 Cal.App.3d 441. C 9/22/87.

660.0265 Sale to State. Real property owned by the State of California that is exempt from property taxation under section 3(a) of article XIII of the California Constitution may include possessory interests. Therefore, a post-lien date sale of a possessory interest to the State should result in a cancellation or refund of property taxes on an apportioned basis pursuant to Revenue and Taxation Code sections 5081 through 5091. C 5/9/88. (M99-1).

660.0274 Statutory Fees Paid By Federal Government. Payment of twenty-five percent of all moneys received during any fiscal year from each national forest, to the States for the benefit of the public schools and public roads of the county or counties in which such national forest is situated are in the nature of volunteer revenue sharing and not taxes. As such, the assessment of possessory interests of private permittees on national forest lands is neither prohibited nor double taxation. C 12/29/98. (2000-1).

660.0275 Statutory Fees Paid By State. Unless designated as in-lieu of taxes, payments by state agencies to counties in amounts equal to the county taxes levied upon the property at the time title to the property was transferred to the state do not constitute property taxes and the assessment of a possessory interest in the same property does not constitute double taxation. C 9/20/93.

660.0285 Taxi Service. Although titled a "Non-Exclusive License Agreement", a contract granting a taxi company the right to pick up and deliver passengers at a location on a municipal airport is a possessory interest if it is durable, exclusive (i.e., not shared in common with the general public), conveys a private benefit, and is sufficiently independent of municipal control as to qualify the taxi company as an independent contractor. C 8/23/85.

660.0296 Term of Possession. A contract between the federal government and a concessionaire providing for the use of federal property for a term of twenty years, provided that if the concessionaire does not complete certain improvements within a specified period, the term shall be five years, results in a term of possession for twenty years with the possibility of possession being reduced to five years, not a five year lease with an option. C 1/23/89.

660.0297 Term of Possession. Where a change in ownership of a possessory interest occurs as a result of a sublease, the anticipated term of possession to be used for valuation purposes is that of the lessee/sublessor rather than the sublessee. C 2/28/94.

POSSESSORY INTEREST (Contd.)

660.0300 Term of Possession. When a governmental agency leases contiguous pieces of property to a single lessee so as to create what appear to be different terms of possession, e.g., one renewable annually by the payment of a fee and the other for a term of 30 years, the term of possession for appraisal and assessment purposes turns on whether the properties are to be used together so as to constitute a single operating and appraisal unit.

If it is unreasonable to conclude that either property would be operated without the other, then it is appropriate to enroll a base-year value for both properties based upon an appraisal that employs the longer term, i.e., 30 years in the above example. The so-called “renewable” interest should not be reappraised each year. C 3/4/87.

660.0301 Term of Possession. The holder of a possessory interest under an annual permit who, at the time of renewal, obtains the right to use additional acreage should have its right to use additional acreage appraised.

If, during the term of possession, additional acreage is made available and integrated into an existing operation, all of the acreage should be appraised since, in effect, a new possessory interest has been created. C 1/14/85.

660.0302 Term of Possession. When the stated term of possessor has expired but the lessee holds over and remains in possession, the assessor should regard the possessory interest as “extended or renewed”, as defined in Property Tax Rule 21(h), and assess the extended or renewed interest as provided in Property Tax Rule 467. C 7/13/84.

660.0320 Termination. A lessee who owns a taxable possessory interest on any given lien date but who has the lease terminated on the succeeding July 31 is eligible for a refund if the value of the possessory interest was based upon a term of possession longer than the actual term, provided he or she files an assessment appeal.

If the property were leased to a second lessee, for example, in September, a new taxable possessory interest would be created, a new base-year value would be determined, and a supplemental assessment would be appropriate. C 9/11/85.

660.0340 University Staff Housing. University staff members’ possessory interests in housing owned by the University of California and located at an agricultural field station are not taxable if the members’ occupancy can be considered reasonably necessary or incidental to an educational purpose. This is a factual determination which must be made using the broad judicial interpretation given the term “reasonably necessary” as a guideline. C 8/29/80.

660.0350 Valuation. The purchase of a possessory interest in government-owned land and of a privately-owned but partially destroyed structure located thereon constitutes a change in ownership. The new base year value of the possessory interest may be determined by various approaches to value. However, when the direct comparison method, a sales approach to value, is employed, the price paid must be augmented by the present worth of any unpaid future contract rents for the estimated remaining term of possession and by any other obligations

POSSESSORY INTEREST (Contd.)

assumed by the purchaser. When the possessory interest rent is a percentage of the gross revenue from the total property, it is appropriate to estimate anticipated income from the improvement in its restored condition in determining future contract rents to be paid. C 10/20/95.

660.0351 Valuation. When applying the income approach, the direct income approach is not a preferred valuation method over the indirect income approach. The particular income method should be applied as circumstances permit. Additionally, the use of contract rent (e.g., rent to the lessor) should only be used for valuation purposes if the contract rent provides good evidence of economic rent. If contract rent is used as an indicator of economic rent, the lessor's gross rental income generally should be reduced by both a reasonable vacancy and loss factor and typical management and other operating expenses of the lessor to arrive at the income to be capitalized. Net rental income may be considered the same as gross rental income where a lessee is responsible for all expenses, such as with a "triple net" or "net" lease; however, in general, gross income must always be reduced by various types of expenses to arrive at net income, the income to be capitalized.

There should be a consistent application of the property tax component to the rent income capitalized. If an amount for property taxes is included in the income being capitalized, then a property tax component should be added to the capitalization rate. If, on the other hand, an amount for property taxes is not included in the income being capitalized, then a property tax component should not be added to the capitalization rate. C 7/31/2000. (2002–1).

660.0360 Vehicle Parking Space. A county official may have a taxable possessory interest in a vehicle parking space assigned by the county and located on property owned by the county if certain conditions are met; however, the tax ordinarily would not be imposed because the amount received would be less than the costs of collection. OAG 3/20/79 (No. CV 78–125, Vol. 62, p. 143).

660.0361 Vehicle Parking Space. The assignment to county officers or their county employee designees of specific parking spaces on land owned by the county creates taxable possessory interests. If the number of employees eligible to use the spaces on a first come, first serve basis exceed the number of spaces available, then a taxable possessory interest is not created. 62 Ops. Cal. Atty. Gen. 143 (1979); C 5/4/90.

660.0365 Vending Machines. A beverage manufacturer's right to occupy space in public schools for its vending machines and other equipment creates a possessory interest if the right is durable, exclusive, conveys a private benefit, and is sufficiently independent to constitute more than a mere agency. However, the possessory interest that arises from the agreement between the school district and the company is exempt as property used exclusively for public school purposes under section (3)(d) of article XIII of the California Constitution and section 202(a)(3) of the Revenue and Taxation Code. School districts are authorized to furnish food service in section 39871 of the Education Code; therefore, vending machines dispensing food items are a service that is directly

POSSESSORY INTEREST (Contd.)

related to and in furtherance of a public school purpose. Assuming that the beverages dispensed in the vending machines can be classified as a food product, the school district's agreement with the beverage company permits an incidental use of school property that is in furtherance of the primary purpose of the school district. C 10/4/2002. (2004–1).

660.0370 **Veterans.** The private rental of space at county fairgrounds or the State Fair creates a taxable possessory interest, absent any exclusion or exemption. Since Business and Professions Code section 16102 is a limitation on local business licensing for veterans, rather than an exemption from property tax, this statute has no effect on an assessor's authority to assess any possessory interest under the California Constitution and the Revenue and Taxation Code. Therefore, a taxable possessory interest in rental space at the State Fair or county fairgrounds is subject to assessment, even though the vendor may be a veteran. C 5/23/2001. (2003–1).

PRIVATE RAILROAD CAR COMPANY

See Private Railroad Car Tax

670.0000 PRIVATE RAILROAD CAR TAX

670.0001 **Assessment by Car Class.** The Private Railroad Car Tax is assessed against car classes, not individual cars. If a class of car is owned on the lien date, it will be assessed on the basis of the presence of that class of car in the state during the calendar year prior to the lien date. Likewise, if a person does not own a car of a particular class on the lien date, that car class will not be assessed, regardless of the presence of cars of that class in the state during the preceding year. C 6/22/92; C 8/30/96. (M98–1).

670.0005 **Depreciation of Car Betterments.** Subdivision (g) of Revenue and Taxation Code section 11292 provides that betterments shall be valued on the basis of the remaining depreciable life of the car to which the betterment is applied. In applying this standard, the betterments should be included in the acquisition cost of the car regardless of when the betterment is placed on the car. In other words, the accumulated depreciation to be assigned to a betterment is that based on the age and total depreciable life of the railcar to which the betterment has been applied. C 3/14/96.

670.0015 **Railcar Mark Usage.** When a railcar leasing company has contracted to lease a railroad's reporting mark for flatcars for a three-year period, the flatcars are not considered part of the railroad operating property merely because they carry that railroad's Association of American Railroad (AAR) mark. If the flatcars were leased to the railroad and used in the railroad operations, however, they would be.

Assuming that the railcar leasing company is a non-railroad entity, the flatcars are assessed and taxed as private railroad cars if they are leased to a non-railroad entity. However, if the cars are leased to a railroad operating in California and used by that railroad in the operation, maintenance, construction, or

PRIVATE RAILROAD CAR TAX (Contd.)

reconstruction of its property, then they would be assessed and taxed as part of that railroad's operating property. C 2/26/98. (M99-1).

670.0020 Subsidiary Corporations. The fact that a corporate subsidiary owns and operates a repair facility that services railcars owned and operated by another corporate subsidiary is not sufficient basis for the Board to assess the subsidiary's repair facility property. The actual relationship between and the operations of each corporation must be reviewed to ascertain whether or not their separate identities should be recognized for purposes of assessment. C 1/16/87.

670.0022 Untimely Annual Report. A ten percent penal assessment for lack of timeliness is to be added to an assessment when a private railroad car company fails to make the required collective filing for its taxable holdings under a management company type organization on or before April 30 or such time as extended by the Board. Individual reports for each car owner do not constitute a valid filing. C 6/20/78.

670.0025 Untimely and Unsatisfactory Annual Report. Revenue and Taxation Code Section 11273 requires imposition of a ten percent penal assessment for lack of timeliness, and Section 11316 requires imposition of an additional ten percent penal assessment for an unsatisfactory report. Such are separate acts of malfeasance to which separate penal assessments apply. C 8/17/83.

675.0000 PRIVILEGES AND IMMUNITIES

See Foreign Government

675.0001 Foreign Nation Real Property. Real property located in California but owned by a foreign nation may be immune from property tax pursuant to treaty or other agreements executed by the United States and the foreign nation. In each instance, the treaty or agreement must be examined to ascertain whether or not immunity has been granted.

Pursuant to the Taiwan Relations Act, Public Law 96-8 of April 10, 1979, as implemented by an agreement dated October 2, 1980, the real property of the Coordination Council for North American Affairs, a Taiwan instrumentality, is immune from property tax if used for the organization's authorized functions. C 1/27/92. (M99-1).

680.0000 PROPERTY STATEMENT

See Deadlines for Filing

680.0010 Completeness. A timely-filed property statement is not automatically full and complete upon receipt by the assessor. It is received subject to audit and therefore, it may be verified by other statutory means at the assessor's disposal. C 3/8/94.

680.0030 Failure to File. The ten percent penalty for failure to file an annual property statement is applicable where:

1. A statement has not been requested, property at multiple locations within the county has a total cost over \$30,000, no assessment has been enrolled, and no

PROPERTY STATEMENT (Contd.)

statement has been filed. Upon discovery, the penalty applies to all the unreported property. If the taxpayer had voluntarily filed a statement for one of the locations, the unreported property would be treated as an escape, but the penalty would not apply.

2. A statement has been requested, but no statement has been filed. A request by the assessor is a request for reporting all property in the county by location, and the penalty applies to all the unreported property. LTA 8/22/79 (No. 79/144). (Am. 2000–2).

Note: Stats. 1996, Ch. 1087 changed \$30,000 threshold to \$100,000.

680.0035 Filing. Capital leases are analogous to conditional sales contracts and financing leases. Accordingly, lessees under capital leases are considered the owners and assesseees of their respective leased properties. Such lessees are responsible for filing business property statements to report their leased properties, pursuant to Revenue and Taxation Code section 441. C 5/16/2002. (2003–1).

680.0040 Leased to Government. Under a “lease to ownership plan” or a direct financing lease, the federal government lessee is considered to be the owner of the personal property if the federal government has exclusive management, responsibility, and control, and must reimburse lessor for applicable sales taxes, use and gross receipts taxes, and personal property taxes. Even though the leased property is immune from property taxes, the private lessor is responsible for filing business property statements for the property under Revenue and Taxation Code section 442(c), unless the property is specifically exempted. C 12/23/2004. (2005–2).

680.0090 Separate Statements. Affiliated corporate assesseees must file separate statements for each business location within a county to the extent that the personal property of each in the county has an aggregate cost of \$30,000 or more, or if requested to file by the assessor. A parent corporation cannot file a single, combined statement on behalf of itself and its subsidiaries. C 10/16/78.

Note: Stats. 1995, Ch. 498 changed \$30,000 threshold to \$100,000.

680.0100 Statement Not Required. Where a lessor leasing property to free public libraries or museums, public schools, community colleges, state colleges, state universities, or nonprofit institutions of higher education which have the option at the end of the lease to acquire the leased property for one dollar (\$1) of any other nominal sum, and where the lessor files an affidavit with the assessor within 120 days of the commencement date of the lease, or within 120 days of January 1, 1988, in the case of an existing lease, identifying the subject property and attesting to the purchase option, the lessor no longer needs to report the property on its annual property statement. The assessor should enroll the property as belonging to the exempt entity. LTA 3/9/88 (No. 88/20).

PROPERTY TAX LIMITATION, ARTICLE XIII A

See Article XIII A—Property Tax Limitation

690.0000 PUBLIC SCHOOLS EXEMPTION

See Possessory Interest

State University Exemption

Welfare Exemption

690.0001 Buildings Under Construction. During the period public school buildings are under construction, the exemption is not available and may not be claimed. C 1/26/78.

690.0003 Charter Schools. Property used exclusively for public school/charter school purposes by a charter school incorporated as a nonprofit public benefit corporation will be eligible for the exemption as of January 1, 1999, assuming that the agreement with the school district is valid and in effect. C 7/15/98; C 11/18/99. (2000-1; Am. 2000-2).

690.0005 Eligibility and Termination. Eligibility for the exemption is to be determined as of the lien date each year. Property which is leased or rented for such purposes can only be exempted after compliance with the claim provisions of the Revenue and Taxation Code.

The exemption is not terminated at once but must be determined as of the lien date next following the expiration of the lease or rental agreement. OAG 7/8/75 (No. CV 75-60, Vol. 58, p. 538).

690.0010 Off-Campus Facilities. Off-campus facilities owned or leased by an apprenticeship program sponsor and used exclusively for public school purposes are within the exemption. Such facilities are not eligible for the exemption, however, if they are not “exclusively used” for such purposes. C 1/10/78.

690.0041 Possessory Interest. In *Connolly v. Orange County* (1992) 1 Cal.4th 1105, the court held that leasehold interests, held by faculty members and other employees of the University of California, Irvine, in University land upon which they had built privately owned homes, were not eligible for the exemption afforded public schools, community colleges, state colleges, and state universities. LTA 5/19/92 (No. 92/38)

690.0042 Possessory Interest. The lease of tax-exempt land by a school district to a public facilities corporation solely owned by the district creates a taxable possessory interest assessable to the corporation. If the land is subleased to the school district and used exclusively for public school purposes, as required by Revenue and Taxation Code section 202(a)(3), the exemption is applicable. C 4/20/93. (M99-1).

690.0052 Property in Another County. Property used by a school district for public school purposes is tax exempt even if located in a county other than the county in which the school district is located. C 10/29/85.

690.0070 Public School Uses. Property used but not owned or leased by a school district exclusively for administration offices is eligible for the exemption. Determinative is whether property is used exclusively for public schools, not whether the property is owned by or leased to the district. C 8/7/85.

PUBLIC SCHOOLS EXEMPTION (Contd.)

690.0071 **Public School Uses.** Property owned by the California School Boards Association, a California nonprofit corporation, and used for the benefit of school board members as school board members could be considered exempt as “property used exclusively for public schools”. The Association’s activities, while directed in the first instance toward various school boards, are for the ultimate benefit of the public schools represented by member boards. C 2/28/90.

690.0072 **Public School Uses.** Property leased to a county board of education and used exclusively for public school purposes is qualified for the exemption in that such boards are defined by article IX of the California Constitution as part of the public school system. C 10/8/75. (M99–1).

690.0073 **Public School Uses.** A joint powers agency, which is comprised of 7 county offices of education and 45 school districts, leases office space and owns personal property. Revenue and Taxation Code section 6507 provides that an agency created by a joint powers agreement is a public entity separate from the parties to the agreement. Thus, the personal property is owned by the joint powers agency rather than its school district and county offices of education members. As a separate governmental agency, the joint powers agency is not a public school within the meaning of article XIII, section 3(d) of the Constitution and Revenue and Taxation Code section 202(a)(3). Thus, the personal property owned by a joint powers agency is not eligible for exemption as property used exclusively for public schools; however, it does qualify for exemption as property owned by a local government (article XIII, section 2(b), and section 202(a)(4)). C 2/29/2000. (2001–1).

690.0085 **Regional Occupational Centers.** Property owned or leased by a regional occupational center and used exclusively for public school purposes is eligible for the exemption. C 5/8/80.

690.0100 **Vending Machines.** Revenue and Taxation Code Section 202.6 exempts personal property used exclusively in the performance of certain authorized activities by a student body organization acting pursuant to specific Education Code provisions. Education Code Section 10702 authorizes student body organizations to sell food. The terms of Education Code Section 10701 are met when the student body organization receives the receipts from vending machines. Assuming that the vending machines dispense material which can be classified as “food,” the machines are personal property used exclusively in the performance of authorized activities and should, therefore, be exempt under Section 202.6. The fact that the vending machine company may be profit-making does not disqualify the activity under the Education Code. LTA 4/4/77 (No. 77/56).

690.0101 **Vending Machines.** Personal property used exclusively in a school district’s performance of certain authorized activities is qualified for the public schools exemption. Education Code section 39871 authorizes school districts to furnish food service; therefore, vending machines dispensing food items are a service that is directly related to and in furtherance of a public school purpose.

PUBLIC SCHOOLS EXEMPTION (Contd.)

Assuming that the beverages dispensed in the vending machines can be classified as a food product, the vending machines are personal property used exclusively in the performance of certain authorized activities, which are exempt under section 202(a)(3) of the Revenue and Taxation Code. As use of the property is the criteria for the public school exemption, the ownership of the vending equipment is immaterial. C 10/4/2002. (2004-1).

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700.0000 RACEHORSES

See Business Inventory Exemption

700.0001 Arabian Stallion. A 12-year-old Arabian stallion which has never raced and which has sired several foals, none of which has ever raced, is nonetheless eligible for in-lieu taxation under Part 12 of the Revenue and Taxation Code if he was used for breeding purposes during the previous two calendar years in order to produce progeny that would race. That is a question of fact for the assessor to determine from all the evidence. OAG 4/30/86 (No. 86-107, Vol. 69, p. 88).

710.0000 REDEVELOPMENT PROJECTS

710.0001 Financing. A redevelopment agency may use the proceeds from the sale of otherwise unencumbered property acquired with tax increment revenues to help finance a redevelopment project other than the project from whose area the revenues were initially derived. OAG 6/19/80 (No. 80-506, Vol. 63, p. 509).

710.0005 Housing Set-Aside. When a redevelopment agency calculates the 20 percent “set-aside” for low-and moderate-income housing, the set-aside is based upon the total tax increment revenues allocated to the agency irrespective of any subsequent transfers made by the agency to other public entities. OAG 7/14/93 (No. 93/209, Vol. 76, P. 137).

710.0010 Property Taxation. Property owned by a city redevelopment agency is exempt from property taxation if the property is located within the city’s limits but outside the boundaries of any project areas of the redevelopment agency. OAG 11/21/91 (No. 91/713, Vol. 74, P. 207).

710.0015 Valuation of Leases. A lessee of real property leased from a redevelopment agency for a specific purpose, e.g., a parking lot, should be assessed in accordance with the market value of the property based upon the lessee’s restricted use. In other words, the leased property is to be appraised as if owned in fee, subject to the effect, if any, upon value of any enforceable restrictions to which the use of the property may be subjected. LTA 5/16/77 (No. 77/73).

720.0000 REFUNDS

*See Assessment Appeals Board
Mines and Minerals*

720.0005 Audits. The failure in the course of an audit to uncover an overpayment of taxes does not negate a taxpayer’s obligation to file a claim for refund within the applicable statutory period. Ideally, an audit will discover overpayments as well as underpayments of taxes. However, an audit does not excuse failure to meet applicable statutory deadlines, such as those covering claims for refund. C 2/28/86.

REFUNDS (Contd.)

720.0009 Base Year Value Appeals. Where an assessment appeals board has rendered a decision establishing the base year value for a property, the assessed values on the roll for years subsequent to the year of appeal must be conformed to the board's determination; and appropriate refunds should be paid without further action by the taxpayer and/or escape assessments levied. The base year value correction and refund should be made consistent with the board's base year value determination, even though an action for refund has been initiated by the taxpayer and/or the assessor has challenged the board's decision, pending the outcome of the superior court action. This is so because the board's determination remains the "control figure" until changed. C 10/27/2000. (2002-1).

720.0011 Base Year Value Corrections. Where the assessor properly corrects a base year value pursuant to Revenue and Taxation Code Section 51.5, refund of overpaid taxes for a year is not precluded by the fact that no roll correction was made by the assessor for such year as long as a valid and timely refund claim is filed. C 1/12/96.

720.0020 Claim. Where a claim for refund is filed but not an application for reduction of assessment, the claim must be verified by the person who paid the tax, his or her guardian, executor or administrator. Verification by the agent of such person will not suffice. C 1/12/96.

720.0021 Claim. The untimely filing of an application for reduction of assessment is not cured by the filing of a claim for refund within three years of the assessment. Even though inquiries were directed to the assessor's office and a reduction in value was obtained for a subsequent year, a claim for refund and/or a suit for refund would likely be dismissed for failure to exhaust administrative remedies. C 5/16/89.

720.0030 Defendants. Revenue and Taxation Code Section 5148 requires that any city which may be liable for the refund of property taxes be named as a party defendant so that it will have the opportunity to appear and defend against the claim/action. C 6/3/87.

720.0040 Estimated Assessments. Where estimated assessments have been made because assessee failed to file property statements, as required, and where assessee subsequently filed late property statements which indicated that such assessments were excessive, a county may not grant refunds to the assessee, even if the assessor agrees that such assessments were excessive. In such instances, applications for reductions in assessments should be timely filed. See *Los Angeles Etc. Corp. v. Los Angeles County*, 22 Cal.App.2d 418.

On and after January 1, 1979, however, if upon audit it is disclosed that an assessment was excessive for any cause, which includes an estimated assessment made because the assessee failed to file a property statement, Revenue and Taxation Code Section 469 directs the assessor to notify the taxpayer of the amount of the excess valuation and of the fact that a claim for cancellation or refund may be filed with the county as provided by Sections 4986 and 5096. C 4/28/81.

REFUNDS (Contd.)

720.0060 **Interest Payable.** Interest is not payable on a property tax refund claim unless there has been an adjudication of the claim or entitlement to recovery of interest is specified by statute. C 9/20/78.

730.0000 RELIGIOUS EXEMPTION

730.0005 **Church Property Leased To School District.** A church whose property would qualify for the exemption except that it is leased to a school district and used by both entities may claim the religious exemption and, pursuant to Revenue and Taxation Code Section 214.6, annually file a lessor's exemption claim (with the affidavit thereon executed by a school district official) with an attached statement affirming that the income under the lease does not exceed the cost of maintaining and operating the property and that the church is located within the school district's boundaries.

The welfare exemption is required, however, if the Church does not use the property, uses the property for purposes other than those permitted by the religious exemption (worship or worship and school activities), uses the property for bingo games, or allows persons or organizations other than the school district to also use the property. LTA 11/3/82 (No. 82/126).

730.0050 **Use By Other Organizations.** Extensive use of church property by outside organizations for purposes other than the religious worship and church school purposes listed in Revenue and Taxation Code section 207, prevents the church from receiving the religious exemption. For the property to be eligible for the welfare exemption, the outside organizations must comply with the requirements of Revenue and Taxation Code section 214, as appropriate. C 1/31/2001. (2002–1).

RELIGIOUS PURPOSES WELFARE EXEMPTION

See Welfare Exemption

732.0000 RENTAL HOUSING EXEMPTION

See Welfare Exemption

732.0020 **Exclusive Use.** Revenue and Taxation Code section 236 exempts property "which is used exclusively and solely for rental housing and related facilities for tenants who are persons of low income." Thus, property must be rented exclusively and solely to tenants who are persons of low income, as defined. C 2/6/98. (M99–1).

REPLACEMENT PROPERTY

See Base Year Value Transfer

RESTRICTIONS ON LAND USE

See Land Use Restrictions

735.0000 RETIREMENT SYSTEMS (PUBLIC) PROPERTY

See Personal Property

735.0010 Partnership. Real property transferred from the California Public Employees Retirement System (CalPERS) to a partnership in which CalPERS is the majority partner is not exempt from property taxation. The property tax exemption for property owned by the state extends only to property owned directly by CalPERS and not to property owned by a legal entity in which CalPERS holds an ownership interest. Thus, a transfer of real property from CalPERS to such a partnership would result in a change in ownership of the property and, absent an applicable exclusion, reassessment of the property. C 6/4/99. (2000–1).

735.0015 Possessory Interests. While the purchase of investment real property by such nontaxable governmental entities as the Public Employees Retirement System requires that any pre-existing leases of the property be enrolled as taxable possessory interests, such acquisition does not, in and of itself, cause the creation of any taxable possessory interests within the meaning of Revenue and Taxation Code section 61(b). While such a purchase results in the separate assessment of any pre-existing leasehold interests as possessory interests, those interests were neither created nor transferred by the sale of the real investment property to the governmental entity. Only when such pre-existing leasehold interests are themselves renewed, extended, or assigned within the meaning of Revenue and Taxation Code section 61(b) does a change in ownership occur. C 4/29/96. (M99–1).

735.0040 State Retirement System. Government Code section 7510(b)(1) requires that language in lease documents inform lessees that the possessory interest tax will be based on a pro rata square footage allocation of the acquisition full-cash value, and section 7510(b)(5) mandates that the subdivision apply to the assessment, computation and collection of taxes for the 1992–93 and subsequent fiscal years. C 4/18/97. (M99–1).

735.0050 Valuation/In-Lieu Fee. Government Code section 7510 allows public retirement systems to purchase properties for investment purposes but also provides for the payments of in-lieu fees by the systems to reimburse local entities for the losses of tax revenues caused by purchases subsequent to the enactment of section 7510 in 1982.

The fee is payable if the purchased property is located within the boundary of the public retirement system, and it is calculated based on the article XIII A of the California Constitution market value of the property at the time of purchase less the value of the possessory interest assessed to the tenant.

If the purchased property is located outside the public retirement system's boundary, section 7510 is inapplicable. Such property is assessed pursuant to article XIII, section 11 of the California Constitution. C 9/23/88. (Am. M99–1).

738.0000 RULES

738.0010 Application Upon Amendment. Unless otherwise provided in the amendments, upon becoming effective, amendments to a rule apply to all

RULES (Contd.)

assessments made on or after the effective date and to assessment appeal hearings associated therewith. They also apply to all assessment appeal hearings in progress on or held subsequent to the effective date, even though the protested assessment may have been made prior to that date. They do not, however, apply to assessments and hearings which were final on or before the effective date. C 10/24/91. (M99-1).

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740.0000 SITUS

740.0001 Aircraft. If an aircraft has acquired situs in the state as defined by Property Tax Rule 205, assessment of the aircraft is proper, notwithstanding foreign registry of the aircraft and foreign citizenship of its owner. C 1/23/85.

740.0002 Aircraft. General aircraft and other personal property are usually taxable in the state of the owner's domicile. An exception arises when the aircraft owner can show that a taxable situs has been established in another state. In the event of multiple situs, proration is required. Property Tax Rule 205(b) should not be applied when assessing general aircraft employed in interstate commerce since that rule is designed to apply only to determinations of situs which pertain solely to California counties. C 7/21/77; C 9/3/96. (M99–2).

740.0003 Aircraft. In the event of taxable situs in more than one state, the primary taxable situs and the secondary taxable situs must be determined. The time spent by the aircraft in the state in which the aircraft has acquired secondary taxable situs divided by 365 days provides the percentage of fair market value to be prorated to the state of secondary taxable situs. C 7/21/77; C 9/3/96. (M99–2).

740.0004 Aircraft. If an aircraft is present in the county on the lien date and had situs in the county for one or more of the preceding assessment years, then it will have current taxable situs in the county even if removed prior to the start of the new fiscal year. C 11/5/97. (M99–2).

740.0005 Aircraft. An aircraft in which ownership has been divided into smaller fractional ownership interests, similar to a timeshare estate in real property without fixed dates of possession, may be taxable in California as a general aviation aircraft. Such fractionally owned aircraft may acquire taxable situs in California if the aircraft maintains a substantial presence in the state. If two or more states acquire the power to tax the aircraft owing to the aircraft's having acquired tax situs in their states, each state is to apportion its tax to the extent that the aircraft could also be taxed by another state. An apportioned value should be based upon the actual time the aircraft was in California.

If such an aircraft acquires taxable situs in California, the proper assessee of an aircraft that is operationally controlled by one entity and fractionally owned by multiple persons is either the entity or the fractional owners pursuant to Revenue and Taxation Code section 405. C 8/9/2006. (2007–1).

Note: These provisions have been superseded by Revenue and Taxation Code sections 1160–1162, added by Stats. 2007, Ch. 180, section 4, effective August 24, 2007.

740.0015 Boats. Racing boats present in a county on the lien date do or do not have taxable situs there depending on a combination of considerations including ownership, home port registry, commercial activity and/or time in the county, tax payments in any jurisdiction and any other facts that indicate that benefits received in a given jurisdiction warrant a conclusion that taxable situs has been achieved. C 12/14/90.

740.0016 Commercial Satellites. Although satellites in outer space may be in direct communication with ground stations in California and, therefore, qualify as property used to generate taxable revenues in this state, they are not property

SITUS (Contd.)

located within the State for purpose of taxation under property tax laws. The satellites in question are not and have never been located in California and are owned by a company that is located outside of California. C 1/30/85. (Am. 2005-1).

740.0030 Documented Vessels. A vessel owned by an out-of-state corporation and documented at a homeport in another state may nevertheless be taxable by a California County provided that its continuous presence in that county indicates that the vessel has acquired a new taxable situs therein. C 2/29/96.

740.0031 Documented Vessels. When a vessel documented in California and owned by a California resident is documented elsewhere and relocated to a foreign country, the vessel will continue to be taxable in California until the owner establishes to the assessor that the vessel has acquired situs elsewhere. It is presumed that if a vessel owned by a California resident is plying the waters of this state, it is sited in California and does not have situs somewhere else. C 3/27/98. (M99-2).

740.0043 Farm Equipment. Where a farm is located in more than one county, the assessor for each county involved may make a request that the owner locate the personal property used in the operation, and he or she may make an assessment based on that information. Lacking response to such a request, the assessor may make an estimated assessment based upon any available information, as provided in Revenue and Taxation Code Sections 501 et. seq.

Property Tax Rule 205 should be followed in determining the situs of movable property. Cooperation between assessors will insure against the possibility of double assessment and taxation. C 10/27/86.

740.0054 Leased Property. Property leased to an out-of-state governmental agency is not exempt because of the lessee's status as a governmental entity. Exemption, however, may be available if the property is used outside California for an extended, but unspecified period, or for more than six months. C 9/26/84.

740.0065 Movable Equipment. Property that arrives in a county during January 1992, and that is to remain there until the end of April, when, according to the owners' stated intention, it is to be moved to a second county for five months and, thereafter, is to be moved to other counties for various periods, aggregating two years in the state, should be assessed by the assessor of the first county. While Property Tax Rule 205 does not specifically cover this sequence of intended uses, the presence of the property in the first county on the lien date and the unlikelihood that situs will be achieved in any other county warrants such an assessment. C 7/1/92.

740.0066 Movable Equipment. Property Tax Rule 205 provides that movable property that does not have permanent situs in the county where it is located on the lien date has situs in the county where it is returned between uses. If there is no such location, the situs is in the county in which the principal place of business of the owner is located. It is the property owner's responsibility to provide documentation establishing that equipment the assessor proposes to assess

SITUS (Contd.)

acquired status elsewhere. If, based upon the evidence, the assessor determines that some equipment has tax situs in his or her county and some in other states, then apportionment of the assessment is required. C 2/10/2004. (2005–1).

740.0086 **Rodeo Animals.** Animals used in rodeo shows that travel from county to county in California and to adjoining states, where they are present for short periods of time, and that are then moved elsewhere or returned to the place of the owners' domiciles do not obtain tax situs at those locations. In accordance with *Ice Capades, Inc. v. Los Angeles County* (1976) 56 Cal.App.3d 745, all of the animals would be assessable at the owners' domiciles and subject to unapportioned property taxes. C 6/13/84.

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740.0095 Soldier's/Sailor's Civil Relief Act. The personal property of military personnel stationed in California but who are not residents and are not domiciled here shall not be regarded as having situs in this State per Title 50 United States Code Annotated, Section 574.

The failure of a service person to claim the protection of the “Civil Relief Act” in a given year is not a bar to a subsequent refund of taxes provided a claim for refund is filed within the statutory period. C 12/6/90.

740.0096 Soldier's/Sailor's Relief Act. An undocumented vessel owned by a serviceman in California on active duty and habitually moored in a California county is not, per Title 50 United States Code Annotated, Section 574, deemed to be located in or have a situs for taxation in the state where the serviceman happens to be due to his military orders.

To be entitled to the homeowners' exemption under article XIII, section 3(k) of the California Constitution, the claimant must be an owner and must be living in the dwelling on the lien date as his principal residence. There is no requirement that the person claiming the exemption be a legal resident of California. Accordingly, unless it can be concluded that the property is a secondary home of the owner, the serviceman meets the requirements for the homeowners' exemption. C 9/1/77.

SPECIAL CONSTRUCTION EQUIPMENT

See Construction Equipment

750.0000 SPECIAL DISTRICTS

750.0051 Maximum Property Tax Rate.

1. A maintenance district formed by a city under Streets and Highways Code Section 5820 et seq. is a “special district” within the definition of Revenue and Taxation Code Section 2215.

2. Streets and Highways Code Section 5830 does not set a maximum property tax rate as that phrase is used in Revenue and Taxation Code Section 2263(1).

3. Since Streets and Highways Code Section 5820 et seq. provides no statutory maximum for property tax rates, if a city on behalf of a maintenance district proposes to use the alternate procedure under Revenue and Taxation Code Section 2266 to determine maximum property tax rate for 1973–74 for the maintenance district, it must use the rate selected pursuant to Revenue and Taxation Code Section 2263(2) as the starting point in making the computations provided for by Revenue and Taxation Code Section 2266. OAG 1/3/74 (No. CV 73–222, Vol 57, p. 1).

750.0052 Maximum Property Tax Rate.

1. Maintenance areas established by the State Reclamation Board or the Department of Water Resources pursuant to Water Code Section 12878 et seq.,

SPECIAL DISTRICTS (Contd.)

are “special districts” within the meaning of Revenue and Taxation Code Section 2215 and, accordingly, are subject to the provisions of Revenue and Taxation Code Section 2201, et seq.

2. Maintenance areas formed under said section of the Water Code are subject to the maximum tax rate limitations imposed by Revenue and Taxation Code Sections 2263 and 2266. To the extent there are increased costs of maintenance after January 1, 1973, which are required to be met by such maintenance areas in order to comply with the requirements of a federal statute or regulation, those increased costs are “costs mandated by the Federal Government”, as defined by Revenue and Taxation Code Section 2206, which fall within the purview of Revenue and Taxation Code Section 2271 under which an additional tax rate is required to be levied in order to meet such increased costs. OAG 7/30/74 (No. CV 73–299, Vol. 57, p. 351).

750.0073 Special Assessments. A fire prevention special assessment adopted pursuant to Government Code Sections 50078 et seq. is not a general tax or a special tax but is an assessment related to the benefits to the property assessed. Such a special assessment, unlike a special tax, e.g. a transaction or use tax, may be adopted by a simple majority of a district board. C 1/19/87.

750.0074 Special Assessments. Assessments of lands for improvements that benefit the lands made in conjunction with bonds issued pursuant to Water Code Sections 36250 et seq. are special assessments, and the limitations of article XIII A of the California Constitution are not applicable. C 9/21/79.

750.0095 Statements of Boundary Changes. Upon the filing of a change of boundaries statement with the Board pursuant to Government Code Section 54902, a district is obligated to pay the regular filing fee (Government Code Section 54902.5) in order to have its statement processed. There is no provision in the statutes for the processing of such statements without charge. C 3/7/86.

755.0000 STATE-ASSESSED PROPERTY

755.0001 Assessment. Pursuant to section 19 of article XIII of the California Constitution, the Board’s obligation is to assess “all property” in this State owned or used by the specified regulated utilities. Therefore, if such a utility neither owns nor uses any property in California, there is no property to assess and the Board need not adopt a zero value assessment. C 10/23/97. (M99–2).

755.0002 Business Inventory Exemption. A public utility may not qualify for the exemption merely because it is a licensed contractor. C 2/11/80. (Am. M99–1).

755.0003 Business Inventory Exemption. Materials and supplies are eligible for the exemption when used by private car companies to maintain and repair private railcars (personalty) that are held for rental to railroads are eligible for the business inventory exemption. C 10/24/96. (M99–1).

STATE-ASSESSED PROPERTY (Contd.)

755.0005 Change In Ownership. Since properties on the State-assessed roll are not subject to the provisions of article XIII A of the California Constitution, changes in the ownership of such properties are not cause for reappraisal as of the date of sales by State assessees to other State assessees.

When State-assessed property changes ownership and, thereafter, is transferred to the local roll, the property should be reappraised as of the date of the change in ownership. The new base year value or the current market value of the property, whichever is less, should be placed on the local roll. C 11/1/95; C 10/31/96. (M99-1).

755.0010 Corporate Signatory. An employee of a corporation who is authorized by the corporation to sign property statements is not necessarily also authorized to sign statute of limitation waiver forms on behalf of the corporation. An employee's authority to sign a waiver form need not be in the form of a "power of attorney" but may be implied from a general authorization to bind the corporation in all tax matters. Authority to waive a statute of limitations should be carefully reviewed because the signing of a waiver could lead to a delay in making an escape assessment beyond the time limitations period and, thus, bar the escape assessment. C 2/6/85. (M99-1).

755.0015 Escape Assessment Under Consideration. Once a decision affecting the property of an assessee has been made by the State Board of Equalization, the assessee is entitled to notice of the action and has the right to be heard in appeal of that action. However, a state assessee does not have an absolute right to address the Board at the time an escape assessment against it is under consideration. C 3/8/79.

755.0020 Failure to File. The penalty provided for in Revenue and Taxation Code section 830(c)(5) for failure to timely file the various parts of the property statement is applicable to each of the failures described in subparagraphs (c)(1), (2), (3), and (4). The penalty limitation is not cumulative. C 7/27/84.

755.0023 Foreign Improvements. "Foreign improvements" are those improvements located on land owned by another person. When the land is owned by a state assessee and is sold to another state assessee but no sale of locally-assessed "foreign improvements" occurs, reappraisal of the "foreign improvements" would not be proper because there has been no change in ownership of the improvements. C 7/17/97. (M99-1).

755.0025 Historical Property. Utility-owned, non-operating properties of historical significance which are subject to governmental restrictions should be assessed by the Board and valued with due regard to the restrictions. C 8/12/94.

755.0045 Leased to the State. On the lien date, certain real property owned by a railway company is leased to Cal Trans. The property is assessable to the railway company. Property owned by a private for-profit organization does not become exempt because it is leased to a government agency. The exemptions provided by Revenue and Taxation Code sections 214.6 and 231 are not

STATE-ASSESSED PROPERTY (Contd.)

applicable because the railway company is not a non-profit organization described in those sections. C 5/12/98. (2000–1).

755.0050 Lessor's Exemption Claims. The State Board of Equalization has no statutory authority to grant exemptions from taxation on State-assessed property where the Lessor's Exemption Claim form must be filed. This power lies with the several county assessors. Therefore, state assessees are to file Lessors' Exemption Claim forms with the assessor of the county in which the property lies. They should also file a copy of their exemption claim with the Board.

Each assessor receiving an exemption claim relating to State-assessed property should act upon such claim in the same manner as he would act upon claims relating to locally assessed property and should forward a copy of the claim to the Board's Valuation Division stating whether the claim has been granted or denied, in whole or in part. C 2/17/78.

755.0060 Mobile Radio Property. A company providing mobile radio services to the general public must be licensed as a communications common carrier in order to qualify as a "regulated telephone company" under article XIII, section 19 of the California Constitution. The fact that a company supplies communication services to a significant portion of the public is not, in itself, a sufficient basis for its property to be state assessed. C 5/10/94.

755.0070 One-Way Paging Companies. Traditionally, the Board, in its capacity as the assessor of "regulated telephone companies" pursuant to the assessment jurisdiction conferred by article XIII, section 19 of the California Constitution, has interpreted "regulated telephone companies" to mean telephone companies that are classified as public utilities by the California Public Utilities Commission (CPUC) or by the Federal Communications Commission (FCC). Effective January 1, 1996, Public Utilities Code Section 234(b)(2) was amended to exclude from the definition of "telephone corporation" one-way paging services utilizing facilities that are licensed by the FCC. The CPUC has not issued a final determination regarding what constitutes a one-way paging service but, in the absence of a final determination by the CPUC, beginning with the 1996 lien date, one-way paging companies that are not otherwise subject to assessment by the Board will be assessed by county assessors. The Board will retain assessment jurisdiction over companies that are not exclusively engaged in one-way paging services, for example, companies that provide both one-way and two-way mobile telephone services. LTA 3/28/96 (No. 96/25).

755.0075 Penalty and Interest Calculations. When audit results indicate there has been taxpayer reporting that caused the Board to overvalue and undervalue certain properties, only the net value added as an escape assessment to the roll should be used as the basis for calculating penalty and interest. An amount in lieu of interest shall be calculated as provided in Revenue and Taxation Code section 864, and imposed on the escape assessment only to the extent that the escape exceeded errors *not* caused by taxpayer errors and Board errors involving an erroneous opinion of value. C 11/2/89. (M99–1).

STATE-ASSESSED PROPERTY (Contd.)

755.0080 Petition for Reassessment. A petition for reassessment filed under Revenue and Taxation Code Section 741 is inadequate and does not meet the requirements of the law unless it enumerates the errors in staff computations and/or approach and apprises the State Board of Equalization of the dollar amounts requested by the petitioner. C 5/30/78.

755.0081 Pipeline Property. The property of a pipeline company used to transport gas is to be State assessed only if the company operates as a public utility. Property owned by a subsidiary of a state assessee is not assessed by the State unless the subsidiary is itself a public utility. C 9/23/92; C 8/26/93. (Am. M99–1).

755.0082 Pipeline Property. Line pipe connected to and part of a pipeline assessed by the Board has been assessed by the Board if it has been fully used, partially used, or unused but available for use, if needed. If an unused portion of line pipe has been disconnected from the pipeline, assessment jurisdiction of that line pipe reverts to the appropriate county assessor.

Whether terminal facilities and storage facilities/tanks are assessable by the Board, however, is dependent upon whether they are essential and necessary to the operation of intercounty pipelines, factual questions which must be decided on the basis of the evidence pertaining to such facilities/tanks. C 3/23/94. (M99–1).

755.0083 Pipeline Property. The Board assesses only those non-public, utility-owned properties that constitute a part of a pipeline, exclusive of associated land and rights-of-way. However, when the pipeline is owned by a regulated utility using it in the transmission or sale of gas, then the land, rights-of-way, and all other property owned or used by the public utility would be state assessed. C 6/24/93; C 9/15/94.

755.0084 Pipeline System. The California Supreme Court, in *General Pipe Line Co. v. State Board of Equalization* (1936) 5 Cal.2d 253, held that it was the Board's duty under the California Constitution to assess all inter-county pipe lines and defined a pipe line to include not only the pipe, but the pumps, boilers, engines, and other appurtenances necessary to the pipe line's proper functioning as such. Breakout tanks are tanks used to relieve surges and to receive and store product for re-injection and continued transportation by pipe lines. The Board has assessment jurisdiction over breakout tanks as such tanks are parts of pipe lines and are essential and necessary to the use and operation of the pipe lines. C 10/4/2001. (2003–1).

755.0085 Property Subject to Assessment. A building that is leased and at least partially used by a state assessee is subject to assessment by the State Board of Equalization, even though portions of the building may be subleased to a non-state assessee. If, however, the lease requires the taxes to be paid by the lessor, who is a local assessee, then the Board may delegate the duty to assess to the county assessor pursuant to the last paragraph of section 19 of article XIII of the California Constitution. C 5/2/96.

STATE-ASSESSED PROPERTY (Contd.)

755.0089 Record Inspection. The allocated values of State-assessed properties constitute “appraisal data” open to the “assessor” and “duly authorized” employees of that office referred to in Revenue and Taxation Code section 833. C 8/22/96. (M99–1).

755.0090 Special Franchises. Special franchises are taxable and must be valued. Since the fee ownership of the property used is in a tax-exempt government entity and the use is by a private taxable party, such franchises can be categorized as taxable possessory interests and must be valued as such. Under *Deluz Homes, Inc. v. San Diego County*, 45 Cal.2d 546, the full value of the right to use is taxable with only the reversion being exempt. One way to measure this value is to capitalize an economic rent for the private right to use the government property for the term of possession. C 4/18/79.

755.0091 Special Franchises.

1. Special franchises are an integral component of the utility’s distribution system. As such, they will be appraised as unitary and operating property of the utility. They are an element of the operating unit.

2. *Deluz Homes, Inc. v. San Diego County*, 45 Cal.2d 546, is a judicial mandate to employ a precise appraisal method to establish the full value of any possessory interest. The Deluz decision controls the standard of “full value” and is applicable to utility special franchises.

3. The State Board of Equalization is required to assess the special franchises in its regular manner. The special franchise is, for all practical purposes, an easement in otherwise tax-exempt property and is a possessory interest within the meaning of Revenue and Taxation Code Section 107.

4. Franchise fees represent amortization or rent of a possessory interest and are not an expense for valuation purposes.

5. All special franchises are appraised in the same manner as other possessory interests assessed by the State Board of Equalization. The distinction between Property Tax Rules 25 and 26 will be applicable. C 5/3/77.

755.0100 Stock and Debt Method. The stock and debt value indicator does not include either the value of a special franchise or a general franchise because these property rights constitute a continuing obligation of the company. The right to do business in California is a continuing obligation that must be renewed annually. The most a stock investor buys is the “expectation” of doing business in California, and it is this expectation which is included in the stock price, not the right to do business. This expectation is as much a taxable entity as any other motive would be for paying a certain price. It is not a portion of the exempt general franchise. C 4/18/79.

755.0110 Telephone Companies. Under paragraph (2) of section 19 of article XIII of the California Constitution, the Board’s assessment jurisdiction extends to all property owned or used by various types of public utility companies, including telephone companies that are regulated. The Board has interpreted the term “regulated” to mean telephone companies that are regulated by the

STATE-ASSESSED PROPERTY (Contd.)

California Public Utilities Commission (CPUC) as public utilities, or by a comparable federal commission or board, such as the Common Carrier Bureau of the Federal Communications Commission (FCC). If a regulated telephone company owns or leases property in the state, including a telephone reseller that has its own switching system in California, that property is subject to Board assessment.

Each telephone company is separately evaluated by the Board to determine for jurisdictional purposes whether it: (1) is regulated by the CPUC or the FCC, and (2) owns or leases property. The evaluation of each company as a separate entity is necessary in order to determine whether the jurisdictional criteria in section 19 have been met. The “separate entity theory” gives effect to the laws of the state that endow corporations, partnerships, limited liability companies, and similar entities with an identity separate from its owners. Whether or not one corporation is wholly-owned by another (subsidiary-parent relationship), respect for the separate identity of each legal entity is basic to the administration and enforcement of state law, including the determination of assessment jurisdiction. C 10/30/2000. (2002–1).

755.0120 Transfer to Board Roll. Property acquired by a state assessee through purchase or lease becomes subject to assessment by the State Board of Equalization at the time of the transfer of ownership or use; however, the property remains on the local roll until the next lien date. No supplemental assessments should be issued for the change in ownership because the property becomes subject to the Board’s assessment jurisdiction as of the transfer date to the state assessee pursuant to section 19 of article XIII of the California Constitution. Any new construction that occurs between the date of transfer to the state assessee and the ensuing lien date is under the Board’s assessment jurisdiction. The new construction will be state-assessed as of the next lien date and placed on the Board roll thereafter. C 9/11/2000. (2002–1).

755.0125 Transfer to Local Roll. A transfer of a lease that was for an original term of less than 35 years by a state assessee to a non-state assessee requires that the leased property be locally assessed at its 1975 fair market value adjusted by the annual inflation factor. C 8/29/85.

755.0126 Transfer to Local Roll. The sale by grant deed of a multiple parcel property by a state assessee to a locally-assessed taxpayer, subject to an option agreement whereby the state assessee may repurchase one parcel, does not result in retention of beneficial ownership in the optioned parcel by the seller. Thus, the entire property conveyed by the grant deed becomes locally assessed. C 3/24/2000. (2001–1).

755.0128 Tribal Tax on State-Assessed Utility Property on Indian Land. Where property owned and used by a public utility traverses Indian land, that property may be assessed by both the State Board of Equalization for local property taxation and be subject to a property tax imposed by the Indian tribe without violating the prohibition against double taxation. Double taxation occurs only when two taxes of the same character are imposed on the same property, for

STATE-ASSESSED PROPERTY (Contd.)

the same purpose, by the same taxing authority, within the same jurisdiction and during the same taxing period. C 1/9/98. (M99–1).

755.0130 Value Adjustments. Each year the Board adopts unitary values for all state assessees. As a result, the only means for a correction to be made to the Board roll, whether as the result of an appeal of the unitary assessment by an assessee or as the consequence of an audit of an assessee by Board staff, is by the approval of the Board. In other words, once a unitary value has been adopted by the Board, only a vote of the Board can change a value on the Board roll. C 7/15/2003. (2004–1).

755.0135 Water Rights. Water rights owned by a city in another county are not part of a flume, canal, ditch or aqueduct that is assessable by the Board but, rather, are assessable by the county assessor pursuant to section 11 of article XIII of the Constitution. C 10/22/84.

760.0000 STATE ASSESSEES

760.0001 Applicability of Local Assessment Statutes. Local assessment statutes are not expressly applicable to state assessees. However, the mandate of section 19 of article XIII of the California Constitution is controlling on the point that property of state assessees shall be subject to taxation to the same extent and in the same manner as local property. Thus, to the extent the Legislature is silent on matters directly affecting the tax liability of state assessees, the Board should be guided by those statutes which directly impact the tax liability of local assessees. C 8/13/81.

760.0003 Detail Statements. The Board’s document titled “Allocations of Assessed Value of State Assessed Property,” prepared in accordance with Revenue and Taxation Code Section 746 and commonly referred to as a “Detail Statement,” contains information derived from property statements filed by state assessees pursuant to Revenue and Taxation Code Section 826 which must be held secret by the Board. Thus, the Detail Statement is not open to inspection by the public or by government officials other than the county assessor and other government officials as specifically provided in Revenue and Taxation Code Section 833. City officials are not among the officials specified in Section 833. C 8/20/96.

760.0005 Petition. In light of Revenue and Taxation Code Section 733, only state assessees may file declarations of intent to petition or petitions for reassessment with the Board. Such assessees can include in their petitions, however, matters contested by their lessees, and in that event, a lessee may appear before the Board at the time and place of hearing upon the state assessee’s/ lessor’s petition. C 9/19/85.

760.0010 Property Statements. An unwitnessed, stamped signature does not satisfy the requirement of Revenue and Taxation Code section 826 that a property statement be signed. C 4/18/84.

STATE ASSESSEES (Contd.)

760.0011 Property Statements. Revenue and Taxation Code section 830(c) provides for the imposition of penalties for failures by assessees to file all or parts of property statements requested by the Board. Timeliness, completeness, and accuracy are relevant considerations when determining whether a penalty is warranted, without any consideration of negligence. C 4/16/96.

760.0015 Reassessment Hearings. The District Court of Appeals in *ITT World Comm., Inc. v. Santa Clara County*, 101 Cal.App.3d 246, enumerated these rules as applicable to hearings for state assessees:

1. Since no one method of appraisal alone can be used to estimate the value of all property, the State Board of Equalization, subject to requirements of fairness and uniformity, may exercise its discretion in using one or more of them.

2. The State Board of Equalization is presumed to have properly performed its duties.

3. The taxpayer has the burden of showing that the assessment was not fair and equitable.

4. The State Board of Equalization is not required to go forward with any evidence, but may stand on the presumption of correctness of the assessment.

5. The taxpayer must overcome the presumption of correctness of the assessment by presenting to the Board evidence of assessment impropriety.

6. In determining the value of property the State Board of Equalization may take into consideration earnings derived therefrom, which may depend upon the possession of intangible rights and privileges that are not themselves regarded as a separate class of taxable property.

7. Market value for assessment purposes is the value of property when put to beneficial or productive use.

8. The assessment of taxable property may take into account earnings from that property that depend upon the possession of a franchise. C 4/4/80.

760.0020 Secret Information. Revenue and Taxation Code section 833 requires that information submitted by a state assessee in a property statement is, with specified exceptions, to be held secret by the Board. However, Government Code section 11125.1 provides that documents which become part of the official Board hearing record become public information following the hearing. C 8/28/96.

770.0000 STATE BOARD OF EQUALIZATION

See Timberland

770.0001 Appeal Hearings. Members of the public have the right to address the Board at a taxpayer's appeal hearing. An employee of a public agency may address the Board on behalf of the agency at a taxpayer's appeal hearing. OAG 9/29/97 (No. 97-412, Vol. 80, p. 247). (M99-2).

770.0010 Assessment Practices Survey. Government Code Section 15641 authorizes the Board to audit the original books of account of any person owning or controlling property included in a survey when the property is of a kind for which accounting records are useful sources of appraisal data. C 10/27/87.

STATE BOARD OF EQUALIZATION (Contd.)

770.0011 Assessment Practices Survey. The State Board of Equalization is not required to disclose other than to an assessee information consisting of appraisal data concerning individual properties selected for appraisal in an assessment standards survey.

The State Board of Equalization is required to disclose parcel numbers of individual properties selected for appraisal in an assessment standards survey unless it can demonstrate that on the facts of the particular case the public interest served by not identifying the parcels clearly outweighs the public interest served by disclosure. OAG 10/8/93 (No. 93/201, Vol. 76, p. 219).

770.0020 Assessors' Handbooks. Handbooks adopted by the Board pursuant to Government Code Section 15606 must be followed by assessors and assessment appeals boards since contemporaneous administrative constructions of statutes by those charged with their enforcement and interpretation is entitled to great weight and courts will generally not depart from such constructions unless they are clearly erroneous or unauthorized. (See *Coca Cola Co. v. State Board of Equalization*, 25 Cal.App.2d 918.) C 9/10/85.

770.0050 Board Property Tax Rules. Board Property Tax Rules impose mandatory duties on county assessors and supersede guidance provided in assessors' handbooks if there are conflicts between rules and handbooks.

Property Tax Rule 6 (the cost approach to value) does not contemplate using acquisition cost, i.e., a sales price after construction, in a valuation based upon cost of construction, except when original cost is unknown. In such an instance, price level changes since the sale must be taken into account as provided in the rule. C 2/25/92.

770.0080 Morgan Property Taxpayers' Bill of Rights. Stats. 1993, Ch. 143, effective January 1, 1994, contains numerous provisions relating to assessment appeals, escape assessments, and information to be provided assessee; and it establishes "The Morgan Property Taxpayers' Bill of Rights." The State Board of Equalization is required to designate an independent "Property Taxpayers' Advocate", who is to be responsible for reviewing the adequacy of procedures relating to the distribution of information regarding property tax assessment matters among the Board, assessors, and taxpayers and procedures relating to the expeditious handling of Board, assessor, and taxpayer inquiries, complaints, and problems. LTA 10/12/93 (No. 93/62) and LTA 12/30/93 (No. 93/80).

770.0095 Participation in a Decision. A member not present at a hearing may participate in the decision if he has made a reasonable effort to achieve a substantial understanding of the record. C 5/30/79.

770.0096 Participation in a Decision. When a majority of the members of the State Board of Equalization are prohibited from participating in the making of a governmental decision:

1. A sufficient number of disqualified members may be brought back to establish a quorum through a process of selection by lot.

STATE BOARD OF EQUALIZATION (Contd.)

2. The process of selection by lot may take any form that results in a random selection of an object representing a disqualified member, where each such member is represented by a different object.

3. In addition to selection by lot, other means of random selection include such activities as flipping coins, drawing cards, and throwing dice or having the members take turns based upon a predetermined order, and other impartial and equitable means of selection include making a qualitative evaluation of the particular interests involved.

4. All disqualified members must participate in the selection process whether by lot, other means of random selection, or other impartial or equitable means of selection.

5. A disqualified member's participation is legally required when his presence is necessary to establish a quorum with respect to the matter regardless of whether the Board's duties in question are statutory or constitutional.

6. The members may postpone the decision regarding the matter depending upon the individual circumstances involved. OAG 11/17/95 (No. 95/324, Vol. 78, p. 332).

770.0100 Property Statements. Only the Board is authorized to prescribe and enforce the use of forms for the assessment of property for taxation. A county assessor cannot legally impose a penalty for failure to file or for the late filing of a property statement that is not a Board-prescribed form. C 3/13/97. (M99-1).

770.0110 Rules—Application Upon Amendment. Unless otherwise provided in the amendments, upon becoming effective, amendments to a rule apply to all assessments made on or after the effective date and to assessment appeal hearings associated therewith. They also apply to all assessment appeal hearings in progress on or held subsequent to the effective date, even though the protested assessment may have been made prior to that date. They do not, however, apply to assessments and hearings which were final on or before the effective date. C 10/24/91. (M99-1).

780.0000 STATE-OWNED PROPERTY

See Government-Owned Property

Leased to Government

Local Government-Owned Property

780.0001 Avocado Advisory Board Property. The Avocado Advisory Board may purchase real property and construct office buildings thereon upon the approval of the Director of Food and Agriculture, whose control is limited by the State Contract Act. The State would be the owner of any such land and buildings, and the property would be exempt from taxation under article XIII, section 1 of the Constitution and Revenue and Taxation Code Section 202. OAG 1/28/75 (No. SO 74-2, Vol. 58, p. 1).

780.0005 California Public Employees' Retirement System. Imposition of an in lieu fee for general governmental services upon the California Public

STATE-OWNED PROPERTY (Contd.)

Employees' Retirement System based upon its ownership of real property would be unconstitutional. OAG 1/3/91 (No. 90/908, Vol. 74, p.6). (Am. M99–1).

780.0010 Possessory Interests. Real property owned by the State of California that is exempt from property taxation under section 3(a) of article XIII of the California Constitution may include possessory interests. Therefore, a post-lien date sale of a possessory interest to the State should result in a cancellation or refund of property taxes on an apportioned basis pursuant to Revenue and Taxation Code sections 5081 through 5091. C 5/9/88. (M99–1).

780.0015 University of California Exempt Status, 4-H Club. Property of an organization having contacts with the University of California is not exempt as state-owned property or as property used exclusively for state universities. C 5/3/78. (Am. M99–1).

785.0000 STATE UNIVERSITY EXEMPTION

See Public Schools Exemption

785.0010 Housing. A state university medical center owns and operates a housing facility for family and friends of patients, outpatients receiving care, people who were inpatients who are receiving further monitoring and testing, and in which students receive training in the delivery of medical care. The housing facility is located on leased land. The underlying leased land is eligible for exemption as property used exclusively for state universities. C 5/2/97. (M99–1).

785.0025 Possessory Interest. A possessory interest owned by the University of California is exempt under section 3(a) of article XIII of the California Constitution, regardless of how it is used. Whether the University is making use of the taxable possessory interest for its educational purposes is irrelevant as section 3(a) does not require such use, only ownership by the state, including state universities. The conditional exemption found in section 3(d) of article XIII of the Constitution for property used exclusively for certain educational purposes is applicable only if the University is using privately-owned property exclusively for University educational purposes. C 1/22/2002. (2003–1).

785.0030 Student Housing. Land owned by the University of California is leased to a private developer which then subleases the land to a non-profit public benefit corporation for the purpose of constructing and owning and operating a student apartment complex. Once the student apartment complex is completed and leased to the university, to the extent the apartments are leased to students and, as permitted by the campus housing director, to other persons affiliated with the university, those improvements will be exempt as property used exclusively for state university purposes within the meaning of section 3(d) of article XIII of the California Constitution. The land will be exempt as property used exclusively for state university purposes when the improvements are in use, to the extent that students and other persons affiliated with the university are residing in the apartments. C 4/6/98. (2000–1).

STATE UNIVERSITY EXEMPTION (Contd.)

785.0031 Student Housing. The University of California leased and used for student housing 3 townhouse units in a development, 34 rooms at a local inn, and a portion of a third building. Property “used exclusively” for state university purposes includes property leased by the University of California which is intended for use as student housing and is occupied by University of California students. Thus, these properties or portions thereof are or will be exempt as properties used exclusively for state university purposes within the meaning of subdivision (d) of section 3 of article XIII of the California Constitution and Revenue and Taxation Code section 202. C 8/3/2000. (2002-1).

785.0050 University of California Exempt Status, 4-H Club. Property of an organization having contacts with the University of California is not exempt as state-owned property or as property used exclusively for state universities. C 5/3/78. (Am. M99-1).

790.0000 SUPPLEMENTAL ASSESSMENT

See Assessment

Assessment Appeals

Newly Constructed Property

790.0001 Addition to Roll. Revenue and Taxation Code Sections 75 et seq. provide for supplemental assessments to be added to a supplemental roll or rolls whenever real property changes ownership or new construction is completed. Such property, excluding fixtures, is to be appraised as the date of the change or completion. LTA 8/9/83 (No. 83/82); LTA 10/19/83 (No. 83/111).

790.0003 Addition to Roll. For a property purchased on March 23, 1990, Revenue and Taxation Code Section 75.11 requires that two supplemental assessments be placed on the supplemental roll because the property was purchased after March 1 but before May 31. Based on Section 75.18, the 2% inflation factor would be added to the new base year value the following March 1, 1991, since the change in ownership entered on the supplemental roll took place between March 1 and June 30. C 9/13/94.

Note: Stats. 1995, Ch. 499, operative January 1, 1997, changed the lien date from March 1 to January 1.

790.0012 Addition to Roll. When adding an assessment to the supplemental roll to reflect value resulting from the completion of new construction, the assessor is not authorized to change the assessment on the regular roll which reflects the prior lien date value of the remainder of the property.

Assessments not reflecting lien date values can be appealed by taxpayers. Changes in values caused by economic conditions subsequent to the lien date can be taken into account when establishing values for the following lien date. C 1/14/87.

790.0020 Addition to Roll-Time Limits. As of September 14, 1992, Revenue and Taxation Code Section 75.11(d) provides specific statutes of limitation for the making of supplemental assessments. Assessments made, i.e. actually added

SUPPLEMENTAL ASSESSMENT (Contd.)

to the roll, before that date were unaffected. Neither were escape assessments affected by this legislative change. Section 75.11(e) provides that the time limits specified in Section 75.11(d) may be extended by written agreement between the taxpayer and the assessor.

An agreement that extends the time for making a correction or claim for refund automatically extends the time for making a supplemental assessment. An agreement limited to a supplemental assessment does not automatically apply to a correction or to a claim for refund. LTA 1/7/93 (No. 93/03).

790.0030 Appeal. An appeal of a supplemental assessment must be filed within 60 days of the date that the supplemental assessment notice was mailed. If the 60th day falls on a Saturday, Sunday, or legal holiday, the assessee has until the next business day to file. It is the new base year value that is the subject of appeal. Thus, an assessee may not appeal on the basis that the taxable value on the current roll is too low and the supplemental assessment is too large.

If the assessee fails to appeal within said 60 days, he or she may appeal during the next regular filing period for assessment appeals (i.e., July 2 through September 15). Should a reduction in value be won, it would be effective only for the regular roll, and no refund would be due for payment of supplemental taxes since a timely appeal of the supplemental assessment was not filed.

If a supplemental assessment appeal is timely filed and heard, the assessee cannot again appeal the base year value during the regular filing period since the value established as a result of the original appeal is conclusively presumed to be the base year value. He or she may file an appeal based upon the contention that the property's current full cash value is less than the taxable value, however. LTA 3/16/84 (No. 84/33).

790.0031 Appeal. Upon a change in ownership where the assessor finds no change in base year value and the supplemental assessment is zero, Revenue and Taxation Code Section 75.31(c) remains applicable and the assessee can still appeal the base year value. For example, a property with a March 1, 1984, roll value of \$57,000 sells for \$35,000 in November of 1984, but the assessor does not recognize the purchase price and reappraises the property at \$57,000, and the supplemental assessment is zero. Assuming that the assessee files an appeal within 60 days of the date that the supplemental assessment notice was mailed, the appeal should proceed to hearing.

In light of Section 75.31(c), a value reduction granted on an appeal of a supplemental assessment should be given the same effect as a Revenue and Taxation Code Section 1605 value reduction. Thus, if a 1983 supplemental assessment was noticed in January of 1985 and the assessee thereafter filed an appeal on or before February 28, 1985, any value reduction made by the appeals board would be available for the 1983 supplemental assessment (Revenue and Taxation Code Section 80(a)(3)) and for the 1984 regular assessment and subsequent assessments, since the appeal was filed during the 1984-85 assessment year (Section 80(a)(4)).

SUPPLEMENTAL ASSESSMENT (Contd.)

Where supplemental assessments have been made subsequent to a supplemental assessment which has been appealed, and the appeals board changes that assessment, such later assessments may be revised or cancelled in order to conform to the decision of the appeals board and to statutory requirements. C 4/26/85.

790.0032 Appeal. In cases involving two supplemental assessments as the result of two changes in ownership, where the first purchaser did not appeal the first supplemental assessment timely and a portion of that assessment became a secured lien against the property pursuant to Revenue and Taxation Code Section 75.54(c), the second purchaser has no right to appeal any portion of the first supplemental assessment. "The supplemental assessment", as used in Revenue and Taxation Code Section 75.31(c), refers only to the second supplemental assessment which resulted from the second change in ownership. C 7/29/85.

790.0045 Applicability. A property with a March 1, 1983, roll value of \$50,000 sells for \$100,000 on April 15, and sells again for \$120,000 in August of 1983. Assuming the sale price of \$120,000 was representative of market value, \$120,000 would become the new base year value, yielding a supplemental assessment of \$70,000 (\$120,000 less the \$50,000 taxable value on the current roll). The interim sale for \$100,000 would not be considered since it occurred prior to the July 1, 1983, effective date for the supplemental roll legislation. LTA 12/16/83 (No. 83/132); LTA 6/20/85 (No. 85/73).

790.0046 Applicability. The new base-year value of a newly constructed swimming pool begun prior to July 1, 1983, and completed subsequent thereto is subject to supplemental assessment in the amount of the value added by the new construction. Although construction commenced prior to the July 1, 1983, effective date for the supplemental roll legislation, the triggering event is the completion of new construction. LTA 3/16/84 (No. 84/33).

790.0055 Calculation. A change in ownership occurring in May 1996 results in two supplemental assessments. Pursuant to Revenue and Taxation Code section 75.11, the first supplemental assessment is calculated by using the base year value enrolled on lien date 1995, and the second supplemental assessment is calculated by using the base year value for lien date 1996. The taxpayer timely filed applications for assessment appeal based on declines in value for lien dates 1996 and 1997, and the assessment appeals board granted those applications and reduced those values. However, the calculation of the supplemental assessments and the new base year value would not reflect those reductions because the applications appealed only declines in value and not the base year value. C 3/28/2001. (2002-1).

790.0060 Disaster Relief. An owner of property subject to a supplemental assessment and which is damaged by misfortune or calamity can receive tax relief under Section 170 on both the supplemental roll and the regular roll. Such would require two sets of calculations to determine the amount of tax relief, one for the supplemental roll and one for the regular roll. LTA 6/27/85 (No. 85/75).

SUPPLEMENTAL ASSESSMENT (Contd.)

790.0075 Exemptions. In instances in which claims for exemption must be filed, any person claiming to be eligible for an exemption to be applied against the amount of a supplemental assessment must file a claim or an amendment to a current claim, in such form as prescribed by the board, on or before the 30th day following the date of notice of the supplemental assessment, in order to receive 100 percent exemption.

In order to receive partial exemption:

(1) With respect to property as to which the college, cemetery, church, religious, exhibition, veterans' organization, free public libraries, free museums, public schools, community colleges, state colleges, state universities, or welfare exemption was available but for which a timely application for exemption was not filed, 90 percent of any tax or penalty or interest thereon shall be canceled or refunded, provided that an appropriate application for exemption is filed on or before the date on which the first installment of taxes on the supplemental tax bill becomes delinquent, as provided by Section 75.52. Notwithstanding the above provision, any tax or penalty or interest thereon exceeding two hundred fifty dollars (\$250) in total amount shall be canceled or refunded, provided that it is imposed upon property entitled to relief under the above provision for which an appropriate claim for exemption has been filed.

(2) With respect to property as to which the veterans', homeowners', or disabled veterans' exemption was available but for which a timely application for exemption was not filed, 80 percent of any tax or penalty or interest thereon shall be canceled or refunded, provided that an appropriate application for exemption is filed on or before the date on which the first installment of taxes on the supplemental tax bill becomes delinquent, as provided by Section 75.52.

(3) With respect to property as to which any other exemption was available, but for which a timely application for exemption was not filed, 90 percent of any tax or penalty or interest thereon shall be canceled or refunded, provided that an appropriate application for exemption is filed on or before the date on which the first installment of taxes on the supplemental tax bill becomes delinquent, as provided by Section 75.52.

Where a late application for exemption has not been filed on or before the date on which the first installment of taxes on the supplemental tax bill becomes delinquent, no exemption is available. Other provisions of Division 1 of the Revenue and Taxation Code pertaining to the late filing of claims for exemption do not apply to assessments made pursuant to this chapter. LTA 2/21/86 (No. 86/19).

790.0076 Exemptions. After January 1, 1994, a failure to file a claim for exemption on or before the date on which the first installment of taxes on the supplemental tax bill becomes delinquent does not result in a total loss of exemption. Rather, the claimant, if qualified, can receive cancellation or refund of 85 percent of any tax, penalty or interest billed and in no event is to pay any amount of tax or penalty or interest thereon in excess of \$250.00. LTA 12/22/93 (No. 93/78).

SUPPLEMENTAL ASSESSMENT (Contd.)

790.0077 **Exemptions.** Revenue and Taxation Code Section 75.21(a) provides that exemption(s) shall be applied to the amount(s) of the supplemental assessment(s). The word “applied” implies the offsetting of one amount against the other. Therefore, exemptions should not be added to negative supplemental assessments since to do so would augment the negative assessments rather than offset against them. C 4/16/86; C 4/24/86.

790.0090 **Fixtures.** As the result of the 1984 amendment to Revenue and Taxation Code Section 75.5, redefining “property” to include fixtures, and the 1984 addition of Section 75.15, requiring taxpayers to report to the assessor annually fixtures added and removed and the values thereof, fixtures as defined in Property Tax Rule 122.5 are subject to supplemental assessments and are to be added to a supplemental roll when they constitute new construction or when a change in ownership occurs. LTA 2/20/85 (No. 85/24).

790.0091 **Fixtures.** As the result of the 1985 addition of Revenue and Taxation Code Section 75.16, the value of fixtures removed on or after March 1, 1985, is to be included in any computation of fixture value whether or not the removal is associated with other new construction. Pursuant to Sections 75.15 and 75.16, the values of fixture removals reported for March 1, 1985, to February 28, 1986, will be considered as negative amounts, credits, when computing any supplemental assessment to be enrolled. If only fixture removals are reported, the taxpayer would get a refund, but only if the taxes had been previously paid; otherwise, the values become negative values that can offset positive values.

Fixtures are deemed to be removed when they are severed from realty; i.e., become personal property. The date of removal to be reported on AH 571D, the supplemental schedule for reporting monthly acquisitions and disposals of property, is the date on which the fixture is severed. LTA 3/31/86 (No. 86/32).

790.0092 **Fixtures.** As the result of the 1987 amendments to Revenue and Taxation Code Sections 75.5 and 75.15 and the repeal of Revenue and Taxation Code Section 75.16, effective August 1, 1987, fixtures are no longer subject to supplemental assessments. LTA 8/11/87 (No. 87/58).

790.0093 **Fixtures.** As of August 1, 1987, fixtures which are normally valued as separate appraisal units from structures are no longer subject to supplemental assessments. However, fixtures included with other property in a single appraisal unit which changes ownership or which is newly constructed are not excluded from the supplemental assessment of the entire unit. C 6/28/89.

790.0100 **Government-Owned Land.** The base year value for taxable government-owned property is the lower of the Phillips Factor value or the fair market value as of the date of change in ownership. Because a different value standard is used to determine base year values for taxable government-owned properties, supplemental assessments are not applicable to those properties. C 1/18/2002. (2003-1).

790.0105 **Historic Property.** Revenue and Taxation Code section 50 requires county assessors to establish new base year values for enforceably restricted

SUPPLEMENTAL ASSESSMENT (Contd.)

historical property upon a change in ownership. However, the establishment of those new base year values merely enables the assessor to perform the three-way value comparison prescribed by Revenue and Taxation Code section 439.2(d) and to calculate the assessed values of historical property should the Mills Act contract enter nonrenewal status (section 439.3). Since the assessments of enforceably restricted historical properties are governed by article XIII, section 8 of the California Constitution, Revenue and Taxation Code section 75.14 precludes assessors from enrolling supplemental assessments for enforceably restricted historical properties upon a change in ownership. C 11/13/2003. (2004–1).

790.0110 Homeowners' Exemption. Revenue and Taxation Code Section 75.54 requires proration of supplemental taxes when a property changes ownership prior to the mailing of a supplemental tax bill resulting from a previous change in ownership, and the exemption can only be allowed to the extent of the supplemental assessment. Thus, the latest owner would not be entitled to the full \$7,000 exemption if his supplemental assessment amount was \$5,000, and to receive the \$5,000 exemption, the owner would have to qualify the property for exemption. LTA 6/27/85 (No. 85/75).

790.0125 Homes Repossessed By Department of Veterans Affairs. When property is sold to a veteran by the Department of Veterans Affairs under an installment contract, the Department holds legal title to the property as security until the purchase price has been paid in full, but the beneficial interest in the property has passed to the veteran in possession (*Eisley v. Mohan*, 31 Cal.2d 637). Thus, there is a change of ownership and the veteran is liable for applicable property taxes.

If a veteran fails to make installment payments or otherwise breaches the contract, the Department may cancel the contract, force a forfeiture, and repossess the property (Military and Veterans Code Section 987.77). At that time, the Department becomes the sole owner of the property; and unless it voluntarily agrees to pay property taxes, the property, being property owned by the State, is exempt from taxation under article XIII, section 3(a) of the California Constitution. C 2/27/85.

790.0145 Leasehold Improvements and Possessory Interests. Assuming that they are newly constructed real property and not fixtures, leasehold improvements are subject to supplemental assessment and would be placed on the supplemental roll upon completion or change in ownership. Similarly, the creation, renewal, sublease, or assignment of a taxable possessory interest after July 1, 1983, is a change in ownership requiring reappraisal and a supplemental assessment. LTA 12/16/83 (No. 83/132).

790.0160 Mineral Properties. A discovery well, an exploratory well that encounters a new and previously unknown mineral deposit, and its proved reserves are subject to supplemental assessment. If newly discovered reserves cannot be produced as a result of the lack of approval by a government agency or the physical inability to produce, the reserves do not meet the definition of proved

SUPPLEMENTAL ASSESSMENT (Contd.)

reserves and should not be assessed until they do. Economic reserves, reserves resulting from enhanced recovery programs, well workovers, recompletions or redrills, or additional reserves resulting from incorrect estimates used for the regular well are not subject to supplemental assessment unless they meet the discovery well test.

New improvement value for development wells, reworks, recompletions or redrills, created as a result of completed new construction, is subject to supplemental assessment provided that the improvement is not classified as a fixture (Revenue and Taxation Code Section 75.10(a)). If an appraisal as of the lien date of reserves related to a proposed development well based upon all relevant information available proves inaccurate, no adjustment to the reserves or the value thereof may be made until the next regular roll. And if a well has been abandoned and the structure removed, the improvement value of the well is the only value change recognized for supplemental assessment purposes (Revenue and Taxation Code Section 75.10(b)). Any part of the well classified as a fixture cannot be recognized for supplemental assessment purposes and remains on the roll until the next lien date, there is no adjustment for reserves until the next regular roll, and no depletion is allowed on the supplemental roll between the event date and the last assessment. LTA 12/15/87 (No. 87/100).

790.0175 New Construction. Revenue and Taxation Code Section 75.12 excludes any newly constructed real property, including grading, constructing roads, and installing underground utilities in a new subdivision, from supplemental assessment where the property is held for sale and the notice required thereby, that the owner notifies the assessor prior to, or within 30 days of, the date of commencement of construction that he does not intend to occupy or use the property, is given. In such event, the new construction will become subject to supplemental assessment at the time the property is occupied or used with the owner's consent.

If the required notice is not given, the date of completion of the new construction is the date upon which the new construction is available for use by the owner, the date upon which the property has been inspected and approved by the appropriate government official, or, in the absence of such inspection and approval procedures, the date as of which the prime contractor has fulfilled all of the contractual obligations. C 3/29/85.

790.0176 New Construction. The addition of new wells to an operating geothermal steam producing property constitutes new construction, as does the addition of the pipeline gathering system and the machinery used in connection therewith. These additions should be considered part of the original appraisal unit and subject to supplemental assessment. Changes in value of the remainder of the property which did not undergo new construction cannot be considered.

Property Tax Rule 468, by its express terms, is limited to oil and gas producing properties. Property Tax Rule 461(d) is applicable when determining declines in value for geothermal properties. C 3/15/90.

SUPPLEMENTAL ASSESSMENT (Contd.)

790.0185 **Open-Space Lands—Nonrenewal.** Williamson Act properties undergoing nonrenewal are not subject to supplemental assessment in addition to the method mandated by Revenue and Taxation Code section 426. C 8/24/94. (2007-1).

790.0195 **Possessory Interests.** When a possessory interest lease in real property is terminated in an assessment year and a new possessory interest lease is entered into with a new lessee for the same property, the full cash value of the new possessory interest as of the date of its creation should be added to the supplemental roll. LTA 1/28/86 (No. 86/12).

790.0210 **Probated Property.** Revenue and Taxation Code Sections 75 and following place no time limits on the assessor and other county officials to determine a new base year value, issue a notice thereof to the assessee, compute the tax or issue a tax bill. These statutory provisions apply without regard to limitation periods applicable to the filing of claims with the probate court.

If an executor or administrator fails to file the notice of change in ownership as required by Revenue and Taxation Code Section 480(b), the assessment for the change in ownership that occurred as of the date of death could be delayed until after the close of probate proceedings and could result in the attachment of a lien on the inherited property. C 7/8/88.

790.0220 **Property Acquired by State Assessee.** Property acquired by a state assessee becomes assessable by the Board at the time of transfer, is no longer subject to article XIII A of the California Constitution, and is not subject to any supplemental assessment. LTA 6/27/85 (No. 85/75); C 3/5/98. (Am. M99-1).

790.0221 **Property Acquired by State Assessee.** Pursuant to Revenue and Taxation Code section 75.54(c), a state assessee that acquires real property from a local assessee acquires it subject to a lien for prorated supplemental tax as the result of a supplemental assessment made for the change in ownership that occurred when the local assessee acquired the property. The prorated supplemental tax results not from a supplemental assessment made upon the transfer of the property from the local assessee to the state assessee but rather from the supplemental assessment made when the property was transferred to the local assessee. There is no statutory provision for removal of a supplemental tax lien or cancellation of a supplemental tax by reason of a subsequent acquisition by a state assessee. C 11/3/2000. (2002-1).

790.0230 **Property Formerly Assessed by the Board.** Once a new base-year value for property, formerly assessed by the Board but which has been sold and becomes locally assessable, has been established pursuant to Revenue and Taxation Code section 75.10, the taxable value on the current roll or the roll being prepared must be determined from figures from the Board roll. LTA 6/27/85 (No. 85/75); C 10/8/99. (Am. 2000-2).

790.0250 **Proved Reserves.** Reserves do not become proved until all permits are secured and the production facilities are built, pipelines installed, etc. Only at that time can the base year value for proved reserves be determined and the property

SUPPLEMENTAL ASSESSMENT (Contd.)

value reflect such reserves. Mineral rights or reserves cannot be treated as construction-in-progress, that is, they cannot be assessed at market value each year until production begins (*Lynch v. State Board of Equalization*, 164 Cal.App.3d 94.). LTA 12/15/87 (No. 87/100).

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SUPPLEMENTAL ASSESSMENT (Contd.)

790.0280 Real Property and Mobilehomes. All real property and any mobilehome subject to taxation under Revenue and Taxation Code Sections 5800 et seq. are subject to supplemental assessment except:

1. Fixtures which are normally valued as a separate appraisal unit from a structure.
2. Property that is restricted to timberland use pursuant to section 3(j) of article XIII of the California Constitution.
3. Property that is enforceably restricted pursuant to section 8 of article XIII of the California Constitution.
4. Property subject to valuation as a golf course pursuant to section 10 of article XIII of the California Constitution.
5. Property subject to valuation as municipally owned property located outside the municipality's boundaries pursuant to section 11 of article XIII of the California Constitution.
6. State assessed property.

A mobilehome sold new on or after July 1, 1983, being subject to local property tax, would be valued as of the date of change in ownership and would be subject to supplemental assessment. A mobilehome purchased new on or after July 1, 1980, and brought into California on or after July 1, 1983, would be valued as of the date of entry and would be subject to supplemental assessment with proration based on date of entry. Where a mobilehome is placed upon the local property tax roll voluntarily or because the license fee has been delinquent more than 120 days, there is no supplemental assessment, however, since there has been no change in ownership. LTA 12/6/83 (No. 83/128).

790.0300 Statute of Limitations. On or after January 1, 1995, supplemental assessments are appropriate if made within the period of the statute of limitations of Revenue and Taxation Code section 75.11 in effect at the time the supplemental assessment is made, notwithstanding that such supplemental assessments would have been barred under the provisions of the previous version of the statute. C 2/6/95. (M99–1).

790.0310 Tenant Improvements. A supplemental assessment, whether based on taxpayer-supplied information or other data, requires the assessor to provide the statutory notice to the assessee. The assessor may enroll, the assessee may challenge, and the assessment appeals board may determine only the value of tenant improvements subject to the supplemental assessment. C 10/30/90.

790.0325 Time Limitations. Prior to the amendments to Revenue and Taxation Code Section 75.11, effective September 14, 1992, adding express time limits for making supplemental assessments, there were no time limits for making such assessments resulting from an error or omission not involving the exercise of the assessor's judgment as to value. The provisions of the Revenue and Taxation Code relating to escape assessments are not applicable to supplemental assessments. C 12/1/92.

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800.0000 TAX ASSESSMENT

800.0001 Fire Protection District.

1. Taxes assessed by a fire protection district on property within territory annexed to a city, but not detached from the fire protection district, were not erroneously or illegally assessed or collected within the meaning of Revenue and Taxation Code Section 5096 in the absence of the application of Section 5096.1 of the Code. A finding by resolution of the fire protection district or the annexing agency that detachment proceedings were not commenced due to excusable neglect is a prerequisite to the applicability of Section 5096.1.

2. Section 5096.1 applies to taxes which may have been collected prior to its enactment, subject to the applicable statute of limitation.

3. Revenue and Taxation Code Section 5097 is the controlling statute of limitations pertaining to refunds under Sections 5096 and 5096.1, which section allows a claim to be filed within four years after making the payment or within one year after the mailing of notice as prescribed in Section 2635 of the Code, whichever is later.

4. Provided the Section 5096.1 resolution states that the fire protection district is the entity which erroneously received the tax revenues, the fire protection district is responsible for the refund, not the annexing city. OAG 6/30/77 (No. CV 76-208, Vol. 60, p. 197).

805.0000 TAX COLLECTOR—DELINQUENT TAXES COLLECTED BY
See Delinquent Taxes

805.0001 Prepayment of Property Taxes. The tax collector may not accept for current expenditure voluntarily prepaid property tax to be applied against future tax liability. OAG 8/6/85 (No. 85-104, Vol. 68, p. 223).

810.0000 TAX-DEEDED PROPERTY

810.0005 Excess Proceeds. A person who has been awarded the excess proceeds from a tax deed sale, after a judicial hearing as provided in Revenue and Taxation Code Section 4675, is not entitled to interest on that award. OAG 1/7/82 (No. 81-209, Vol. 65, p. 1).

810.0010 Subdivision Map Act:

1. The Subdivision Map Act and subdivision ordinances enacted pursuant thereto do not apply to a tax collector's sale of a portion of a tax-deeded parcel pursuant to Revenue and Taxation Code Section 3691.

2. When the tax collector sells a portion of a tax-deeded parcel at a tax sale the purchaser is entitled to a certificate of compliance as to such portion as provided in Government Code Section 66499.35.

3. A board of supervisors in a general law county has no legislative authority to require the tax collector to comply with the Subdivision Map Act and the county subdivision ordinance enacted pursuant thereto in the tax sales of

TAX-DEEDED PROPERTY (Contd.)

portions of a tax-deeded parcel by means of a county ordinance imposing such a duty on the tax collector. OAG 11/9/81 (No. 81/405, Vol. 64, p. 814).

820.0000 TAXES

820.0001 Acquisitions by Public Retirement Systems. A public retirement system acquiring real property located within its boundaries must, pursuant to Government Code Section 7510, reimburse cities or counties for revenue loss resulting therefrom in an amount equal to the difference between the taxes that would have accrued and the taxes due for possessory interests in the acquired property. However, Section 7510 does not apply to such systems previously authorized by statute or ordinance to invest in real property. LTA 1/6/83 (No. 83/3).

820.0004 Allocation. A county auditor may not allocate a portion of property tax revenues to an irrigation district that levied only an ad valorem assessment prior to the 1978–1979 fiscal year. OAG 5/24/2001 (No. 00–1104, Vol. 84, p. 81). (2005–1).

820.0008 Distribution.

1. “Participating revenue districts” for purposes of the alternative method of distributing tax levies are cities and districts for which county officers assess property and collect taxes or assessments and for which the alternative method of distributing tax levies has been implemented.

2. The consequences of being a public district “for which the county treasury is not the legal depository” for purposes of the alternative method of distributing tax levies are that such district’s governing board and the board of supervisors must both approve the district’s participation in order to implement the program for the district. OAG 2/14/2002 (No. 00–1107, Vol. 85, p. 29). (2005–1).

820.0022 Special District/Tax Rate. Article XIII A of the California Constitution placed limitations upon the amounts of new taxes imposed by special districts. It did not relate to pre-existing tax rates; nor does it prevent the spreading of existing debt to newly annexed areas, even if this results in increased taxes in the annexed areas. The increase in taxes for property owners within a newly annexed area is merely a sharing of the existing tax burden by the property owners in the annexed area. C 9/27/79.

825.0000 TAX RATE

*See Aircraft
Annexation*

825.0001 Special District May Exceed Maximum Tax Rate.

1. A special district which has a maximum property tax rate established by the enabling statute under which it is organized as provided in Revenue and Taxation Code Section 2263(1) may exceed that rate under the provisions of Section 2270 of the Code.

TAX RATE (Contd.)

2. A special district which has made a promissory note prior to the effective date of section 2270 may exceed its property tax rate under the provisions of section 2270(1) in the amount required to pay installments of interest and principal falling due under the promissory note during the next fiscal year. OAG 2/26/76 (No. CV 75-271, Vol. 59, p. 109).

TAXPAYERS' RECORDS

See Business Records

Confidential Records of Taxpayer

TIMBER

See Business Inventory Exemption

Timber Yield Tax

830.0000 TIMBERLAND

830.0005 Appeals. Timberland Production Zone (TPZ) site classifications and values used by assessors for valuation purposes are, like assessors' other value judgments, appealable annually to the assessment appeals board or county board of supervisors meeting as a county board of equalization. (Revenue and Taxation Code sections 1601, et seq.) C 9/15/98. (M99-2).

830.0009 Base Year Value for Purposes of Contract Nonrenewal. Timberland removed from a timberland production zone pursuant to Government Code section 51120 is valued according to the nonrenewal valuation provisions of Revenue and Taxation Code section 426. Those provisions prescribe value calculations on a yearly basis according to a prescribed formula using values, including base year values, and factors determined for each of the years of valuation. If a property changes ownership during the nonrenewal period, the new base year value established for the date of change in ownership is the correct value to use when calculating the assessed values for the remaining years of the nonrenewal period. C 6/21/2000. (2002-1).

830.0015 Compatible, Nonexclusive Uses. Revenue and Taxation Code section 435(a) requires that the value attributable to existing, compatible, nonexclusive uses, including compatible uses listed in Government Code section 51104(h), on Timberland Production Zone (TPZ) land are the fair market values of such uses, including the values of any added lands or improvements utilized in the course of such uses, or the base year or adjusted base year value of such uses, including such values of any added lands or improvements, whichever is lower, as determined annually.

However, the values of roads and other improvements providing access necessary to the growing and harvesting of timber on the site are included in immediate harvest values per Revenue and Taxation Code section 38109. Only the value of roads and other improvements that are unrelated to or exceed ("superior to") what is necessary for access to the timber on the site is to be added to the TPZ land value under Revenue and Taxation Code section 435(a). C 6/8/2000. (2001-1).

TIMBERLAND (Contd.)

830.0020 **Defined.** When establishing Timberland Preserve Zones pursuant to Government Code sections 51100 et seq., whether land is devoted to and used for growing and harvesting timber, not the profitability or unprofitability of a particular situation, is determinative. C 11/9/78.

830.0021 **Defined.** “Capable of growing an average annual volume of wood fiber of at least 15 cubic feet per acre,” as used in Government Code section 51100(f), includes both land which is currently meeting this criteria and land which is not currently growing such an annual volume but, if properly stocked, could grow such an average annual volume. C 1/27/78; C 2/1/78.

830.0025 **Division into Parcel of Less Than 160 Acres.** Although Government Code section 51119.5 recognizes that parcels zoned as timberland production may be divided into parcels containing less than 160 acres, it requires that the original owner prepare a joint timber management plan before/when doing so, to be recorded as a deed restriction running with the land, and that the division be approved by a four-fifths vote of the full board of supervisors and only after recording of the deed restriction.

In those instances in which an original owner so divides his property and fails to prepare the required joint timber management plan, a county could seek legal recourse to compel compliance with the statute. Government Code section 51118 provides in this regard that land zoned as timberland production shall be enforceably restricted within the meaning of article XIII, section 3(j) of the California Constitution, and that the restriction shall be enforced and administered by the county in a manner to accomplish the purposes of section 3(j) of this chapter (Gov. Code secs. 51100–51155). And Government Code section 51116 provides that the county may bring any action in court necessary to prohibit a use not permitted with respect to land zoned as timberland production including, but not limited to, an action to enforce the zoning restrictions by specific performance or injunction. C 3/6/97.

830.0030 **Eminent Domain.** The immediate rezoning provisions of Government Code section 51155 are operative only when land zoned as timberland production is acquired by eminent domain or in lieu of eminent domain by a public agency of the State or a local government, or the federal government or one of its instrumentalities or agencies. The phrase “in lieu of eminent domain” refers to situations where a public entity proposes to acquire property with the intention of exercising the power of eminent domain in the event the property owner is unwilling to sell the property at a reasonable price based on the fair market value. These provisions do not apply when the state simply purchases property without eminent domain action being contemplated. C 4/15/2002. (2003–1).

| 830.0040 **Immediate Harvest Value.** “Immediate Harvest Value,” as used in Revenue and Taxation Code section 434.5(f), means immediate harvest value as determined from reported volumes of timber harvested from both private and public land. C 12/11/79.

830.0050 **Noncompatible Use.** Land zoned as timberland production is zoned, for property tax purposes, on the basis of its use for growing and harvesting

TIMBERLAND (Contd.)

timber only. When land that has been zoned as timberland production is devoted to noncompatible use, it is within the power of a county or city to end such use by court action. However, the assessor has no authority to assess the property based on its value as other than timberland. C 5/20/88. (M99–1).

830.0055 Nonpermitted Use. Land zoned as TPZ is enforceably restricted and must be valued pursuant to Revenue and Taxation Code Sections 434.5 and 435. There is no legal authority for valuing a TPZ parcel according to its actual use.

Nonpermitted use of TZP property should be stopped by action of the County Board of Supervisors and/or County Counsel pursuant to Government Code Section 51116, or the property could be rezoned pursuant to Government Code Section 51121. C 5/20/88.

830.0070 Preserve Addition. The State Board of Equalization is not empowered to adopt procedures for implementing Government Code Section 51113.5 since zoning matters are within the province of the legislature and county boards of supervisors. C 12/12/78.

830.0071 Preserve Addition/Deletion. Government Code Sections 51100–51155 provide the exclusive means by which a board of supervisors can rezone property which has been zoned as timberland production. Any attempt to rezone such property other than as provided for in Sections 51121, 51133, 51134, and 51155 is void and of no effect. C 6/4/90.

830.0080 Preserve Reduction. The zoning of parcels as timberland production is accomplished pursuant to Government Code Sections 51110 et seq. The rezoning of land already zoned as timberland production must be pursuant to Sections 51121, 51133, 51134 or 51155, as applicable, or the attempted removal from timberland production status is void and of no effect. C 6/4/90.

830.0090 Site Classification. Timberland site classification for purposes of Revenue and Taxation Code section 434.5 is reviewable by the assessor. In cases where redwood trees on timberland property have been harvested and the property has not been replanted with redwood trees for commercial purposes, the assessor may reclassify the timberland within the Redwood Region as property within the Whitewood Subzone of the Redwood Region. C 7/26/99. (2001–1).

830.0100 Tax Recoupment Fee. Upon immediate rezoning of a parcel of timberland following its removal from a timberland preserve zone, a tax recoupment fee is calculated pursuant to Government Code Section 51142. If a sale of the property occurs before or after the rezoning, the assessor must also determine the property's full cash value for purposes of article XIII A of the California Constitution. Depending on the timing of the sale and the rezoning, different values for purposes of calculation of the fee and for purposes of article XIII A may be appropriate. C 4/21/89.

830.0101 Tax Recoupment Fee. Timberland zoned as timberland production that transferred to the federal government or to a state agency would not subject the transferor to a tax recoupment fee. After the transfer, the transferor, who has

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not requested rezoning, would no longer own the property; the property owned by government would be exempt from property tax and would, by statute, be immediately rezoned. C 12/7/95; C 2/20/87. (M99–1).

830.0102 Tax Recoupment Fee. If a landowner requests immediate rezoning of property classified as Timberland Production Zone (TPZ), the law imposes a tax recoupment fee. The fact that a purchaser of timberland is unaware that a request for immediate rezoning will result in a tax recoupment fee is not a basis for the Board’s waiving that fee upon rezoning. While the seller, not the buyer, may have received the benefit of the reduced taxes, it is up to the parties to the sale to consider payment of the fee during the negotiation of the sales price. C2/17/94. (M99–1).

830.0125 Timber. Trees maintained for eventual harvest for firewood are timber. C 11/9/78.

830.0126 Timber. When located on land not zoned as timberland, timber is not subject to property tax at its value as timber. However, the aesthetic or amenity value that timber adds to the land on which it is located may be reflected in the value of that land. An assessment of exempt timber at its timber value can be corrected pursuant to Revenue and Taxation Code section 51.5. C 7/21/95.

830.0135 Valuation—Compatible Use Property. While property restricted to timberland use is to be valued pursuant to Revenue and Taxation Code Sections 431 et seq., structures, structure sites, and property devoted to compatible uses but located in a Timberland Production Zone are to be valued pursuant to article XIII A of the California Constitution, i.e. at their trended base year value or current market value, whichever is less. C 10/6/80.

840.0000 TIMBER YIELD TAX

See Business Inventory Exemption

840.0001 Christmas Trees. Christmas trees grown in a forest, on a tree farm, or even on property operated by a person in the nursery business are subject to the tax if they are to be severed for sale. C 9/23/76; LTA 12/1/76 (No. 76/184); LTA 4/21/77 (No. 77/65).

840.0010 Claim for Refund. A claim for refund must be in writing and must set forth the specific grounds upon which the claim is founded. A request for hearing of the claim must be made if a hearing is desired. The filing of such a claim is a prerequisite to the filing of any legal action in the courts. C 11/28/78.

840.0030 Export Logs. An exempt entity, e.g., an Indian logging company, contracting to fell timber on an Indian reservation and to deliver the timber to the purchaser in a foreign country will, in the course of doing so, place the timber in the “export process”, with the result that Section 9(5) of Article I of the United States Constitution will preclude application of the tax. C 4/23/79.

840.0040 Harvest Value. In determining the immediate harvest values of timber, the Board must consider evidence such as the gross proceeds from sales

TIMBER YIELD TAX (Contd.)

on the stump of similar timber of like quality and character at similar locations or gross proceeds from sales of logs, or of finished products, adjusted to reflect only the portion of such proceeds attributable to value on the stump immediately prior to harvest. "Gross proceeds from sales on the stump" and "value on the stump immediately prior to harvest" include all costs incurred prior to harvest, e.g., cost of access, marking, and preparation of a timber harvest plan, and costs of gaining approval to harvest. Deductions include only costs incurred after severance such as logging, hauling, and scaling expenses. C 10/31/90; C 7/30/93. (M98-1; Am. M99-1).

840.0041 Harvest Value. Harvest values are determined by the Board pursuant to Revenue and Taxation Code section 38109 as interpreted in Property Tax rule 1023 in a manner that makes allowance for age, size, quality, costs of removal, accessibility to point of conversion, market conditions, and other relevant factors. Such values may be modified to reflect changes in timber values resulting from fire, blowdown, ice storm, flood, disease, insect damage, or other causes of damage. There is no statutory authority for altering Board-adopted harvest values because of extraordinary costs of harvest incurred by an individual harvester. C 5/11/78; C 5/2/95.

840.0045 Harvest Value Modification. Revenue and Taxation Code section 38204 authorizes the Board to modify immediate harvest value schedules to reflect material changes in such values caused by fire, blowdown, ice storm, flood, insect damage, or other causes, on its own motion or in response to an application from a timber owner.

Upon receipt of a written application for modification which includes a comprehensive statement of the facts on which it is based, the Executive Director will request from the Timber Tax Division a recommendation as to appropriate Board action. Should the recommendation be negative, the matter could be scheduled for a Board hearing at the owner's request. In the event the application is approved, the modified values would apply to all timber actually affected by the calamity in a given harvest value area. C 7/13/77.

840.0047 Harvesting. While the term may be defined differently for other purposes, harvesting, for timber yield tax purposes, begins with the cutting of a tree and includes the bucking and hauling of it from the cutting area. C 3/24/77.

840.0050 Imposition. Imposition of the tax is not conditioned upon the existence of a timber harvest plan, upon approval or disapproval by the Coastal Commission, or upon any other such contingency. C 11/13/78; C 4/24/80; C 1/12/83.

840.0051 Imposition. Revenue and Taxation Code Section 38115 imposes the timber yield tax upon, among others, the person who harvests (cuts or fells) timber owned by another. The liability for tax is not conditioned upon removal of the harvested timber. C 3/30/87.

840.0070 Logging by Indians. Indians logging timber on Indian reservations are not liable for the tax. Neither are Indian organizations or associations comprised entirely of Indians logging timber on a reservation liable therefor.

TIMBER YIELD TAX (Contd.)

An “Indian” is any person of Indian descent who is entitled to receive services as an Indian from the U.S. Department of the Interior. An “Indian organization” includes Indian tribes and tribal organizations, partnerships, all whose members are Indians, and corporations organized under tribal authority and wholly owned by Indians. C 6/29/78.

840.0080 Measure of Tax. The sales price received for timber is the measure of the tax only if it coincides with the amount shown on the appropriate harvest value schedule. When enacting the yield tax, the Legislature was aware that timber sales often involve not only cash but also the provision of property improvements, such as roads and bridges. It was decided that to avoid an expensive audit program, the State Board of Equalization would semi-annually establish harvest value schedules based on recent sales, taking into account the age, size, quality, costs of removal, accessibility, and market conditions at the time of the sales. Thus, an amount on a harvest value schedule is a derived average which may be higher or lower than the actual sales price of timber. C 11/2/90. (M99–1).

840.0090 Payment Under Protest. The Timber Yield Tax Law contains no provision for payment of taxes under protest. Rather, one paying and contesting the correctness of such taxes must file a claim for refund (Revenue and Taxation Code Sections 38601–38607). C 12/12/79.

840.0100 Proceeds Due a County. Proceeds from the tax due a county may not be withheld from the county until such time as the county complies with the state law regarding Timberland Preserve zoning. C 12/5/78.

840.0101 Proceeds Due a County. The amount paid by the State Board of Equalization to satisfy a court judgment and interest thereon is properly charged to and deducted from timber tax distributions paid by the State Controller to the counties where the taxes were originally collected. C 12/5/90.

840.0120 Reporting. In determining quantities of timber for purposes of the timber yield tax, the specified Scribner Decimal C Log Rule is the standard board foot log rule for timber that is measurable by the net board foot method. As white fir timber is typically timber measurable by the net board foot method, it is reportable in MBF. The fact that a taxpayer may contract for the sale or purchase of timber typically measurable by the net board foot method and specify some other method in the contract, such as weight in tons, as the method of measurement/payment is a matter of contract between the taxpayer and the other party. It in no way impacts upon the manner in which quantities of timber for purposes of the timber yield tax are to be determined under Revenue and Taxation Code Section 38109 and Property Tax Rule 1022. C 2/4/94.

840.0130 Shared Harvest Plan. When two timber owners are sharing one harvest plan, they are required, for purposes of calculating the small total volume deduction, to combine their harvest volumes for each quarter in which they are harvesting from the same assessor’s parcel under one timber harvest plan. The requirements for reporting each harvest separately under one timber harvest plan

TIMBER YIELD TAX (Contd.)

for purposes of calculating the small total volume deduction are that each timber owner must have a separate timber yield tax account and must separately own the land from which the timber was harvested, as identified by the assessor's parcel number. C 3/19/98. (M99–2).

840.0139 **Timber Advisory Committee.** The Timber Advisory Committee is advisory only and acts as a fact-finding and consulting body in the establishment of timber harvest values. Its members may appoint alternates to sit for them without the permission of the other members, and all members' tenures continue for as long as the Board desires. C 11/21/77.

840.0141 **Timber Owner.** While California Commercial Code sections 2107(2) *Goods (Timber) to be Severed From Realty*, and 2401, *Passing of Title* can be determinative of ownership to taxable timber, they do not control when there is a written agreement specifying the precise time at which title to the timber to be harvested transfers. C 9/20/90.

840.0142 **Timber Owner.** Ownership of timber felled on city-owned land is determined by reference to title provisions contained in contracts entered among the city, the logging company and the ultimate purchaser. Tax should be asserted against the first non-exempt owner regardless of contract terms that hold the seller responsible for the tax. Contract liability provisions cannot supersede statutory liability provisions.

Ownership of timber felled on tax-exempt land may be determined by reference to the requests for harvest bids and the bids themselves. These documents will usually make it clear whether the bidder is contracting to perform a harvesting service or is purchasing standing timber. C 2/21/91.

840.0143 **Timber Owner.** An agreement between a property owner and an excavating company requiring the latter to clear and prepare a site for building, including the removal of specifically marked standing timber, constitutes a present sale of timber before severance and makes the company the timber owner for timber yield tax purposes. C 6/12/87.

840.0144 **Timber Owner.** A surety or guarantor who performs a timber sale contract for the person originally obligated to perform it becomes the timber owner as defined in Revenue and Taxation Code section 38104 for purposes of Revenue and Transportation Code section 38115. As such, it is liable for timber yield taxes applicable to the timber harvested.

The surety must be timely billed, i.e., within three years of the quarter for which tax is determined or within three years after a return is filed, whichever is later, or if no return has been filed, within eight years of the period for which tax is proposed to be determined as provided in section 38417. C 3/10/88.

840.0145 **Timber Owner.** When an exempt governmental entity enters into a contract for the sale of standing timber, the non-exempt buyer obtains title with the right to sever and is the timber owner for timber yield tax purposes. If the

TIMBER YIELD TAX (Contd.)

contract specifies a date by which the timber must be removed, the ownership of any timber still standing after that date reverts to the governmental entity. C 8/17/83.

840.0146 **Timber Owner.** A timber sale agreement pursuant to which designated standing timber is to be removed by a specified date results in an immediate transfer of the timber to the buyer, with ownership of the timber that is not harvested by the specified date reverting to the seller. As the timber owner, the buyer is responsible for timber yield tax due on the timber harvested. C 6/9/81.

840.0147 **Timber Owner.** The owner of an unpatented mining claim becomes the owner of timber felled on the land to which the claim relates when the timber is felled for use in connection with mining operations, and he is liable for applicable timber yield tax thereon. An operator hired to fell the timber does not obtain any title to timber illegally felled and appropriated to his own use. C 4/10/80.

840.0148 **Timber Owner.** An oral contract for the sale of standing timber, like a written contract, therefore, results in the purchaser becoming the timber owner for timber yield tax purposes, assuming the existence of the contract and its enforceability is demonstrated. C 2/27/87.

840.0149 **Timber Owner.** A purchaser of standing timber is the timber owner for timber yield tax purposes even though the seller agrees in the contract of sale to reimburse the purchaser for timber yield taxes. C 4/10/85.

840.0150 **Timber Owner.** While governmental agencies are normally exempt from property taxes and, therefore, excluded from the definition of “timber owner” contained in Revenue and Taxation Code section 38104, an exception exists when the timber is located on land that is subject to property tax because it is located outside the owning agency’s boundaries and was taxable when acquired. C 5/27/77.

840.0151 **Timber Owner.** Revenue and Taxation Code section 38115 states that timber yield tax is imposed on every timber owner who harvests timber or causes it to be harvested. A private agreement between the timber owner and the timber operator to the effect that the timber operator is responsible for all timber yield tax does not supersede the provisions of section 38115 and is not binding on the Board. Thus, the timber owner remains liable for the applicable timber yield tax as the result of such harvesting. C 6/25/98. (2000–1).

840.0180 **Timber Owner Scaling Records.** Government Code section 15618 authorizes the State Board of Equalization and/or its staff to examine timber scaling information in the possession of a timber purchaser. C 2/21/79.

840.0190 **Timber Owner Scaling Reports.** Pursuant to Property Tax Rule 1027, timber volumes harvested on U.S. Forest Service property may be reported upon a basis provided for in the rule or upon a basis approved by the Timber Tax Division prior to the due date of the return. Before allowing the use of a reporting basis other than those in the rule, an investigation should be made to insure the

TIMBER YIELD TAX (Contd.)

reliability of the proposed basis. The granting of an alternative reporting basis does not constitute a waiver by the State Board of Equalization of its authority to audit the taxpayer or to collect timber yield taxes due and owing when different than the amount(s) reported. C 7/29/86.

840.0220 **Welfare Exemption.** Timber harvested from land exempt from property taxation under the welfare exemption is subject to the tax. Liability for the tax, however, is upon the “first person” acquiring legal title or beneficial title to the timber after it has been felled from land owned by the exempted organization. C 3/31/80.

TRANSFER OF BASE YEAR VALUE

See Base Year Value Transfer—Principal Residence

843.0000 TRIBAL HOUSING EXEMPTION

See Indians and Indian Lands

843.0060 **Ownership.** Revenue and Taxation Code section 237(a)(1) generally provides that the exemption is available for that portion of property owned and operated by a tribe or its housing entity that is continuously available to, or occupied by, lower income households at specified rents. A land sale contract in which the buyer (taxpayer) holds the present beneficial interest and the seller (tribal housing authority) holds only legal title to the property makes the property ineligible for the exemption because the property is being purchased, not rented. C 2/9/2004. (2005–1).

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845.0000 UNIT

845.0001 Appraisal Unit. As defined in Property Tax Rule 324(b), what does or does not constitute an appraisal unit is a factual question within the purview of the local board of equalization, and it is not subject to any special legal constraint. C 3/31/95.

845.0002 Appraisal Unit. Even though an assessor is not separately assessing each unit in a cooperative housing corporation, each unit constitutes an appraisal unit for valuation purposes. The individual unit should be reappraised and a base year value established when it is the subject of a change in ownership as defined in Revenue & Taxation Code section 61(h). C 10/7/82.

845.0010 Cable Television Appraisal Unit—Declines in Value. In determining whether or not cable television systems have declined in value, assessors must follow the requirement set forth in Property Tax Rule 461(d) that fixtures and other machinery and equipment classified as improvements be treated as a separate appraisal unit. C 11/7/96. (M99–1).

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848.0000 VALUATION METHODOLOGY

848.0005 Cable Television Appraisal Unit—Declines in Value. In determining whether or not cable television systems have declined in value, assessors must follow the requirement set forth in Property Tax Rule 461(d) that fixtures and other machinery and equipment classified as improvements be treated as a separate appraisal unit. C 11/7/96. (M99-1).

848.0010 Comparative Sales Approach. For property tax purposes, evidence relating to the recent sale of a subject property or of a comparable property *may* be relevant to the determination of the fair market value of the property as long as the evidence aids in shedding light on the issue. Nevertheless, such evidence may not be sufficiently reliable to establish value—or even to be given consideration—when there are other factors at play that may have affected the purchase price. Such factors may include the personal or contractual relationship of the parties and the presence of other components or business considerations. C 6/30/2000. (2002-1).

848.0040 Income Approach. Revenue and Taxation Code section 402.5 prohibits the use of sales of real property occurring more than 90 days after the valuation date when valuing property by the comparable sales approach to value. However, the 90-days limitation of section 402.5 does not apply to the use of sales in computing capitalization rates to be used when valuing property using the income approach to value. C 5/29/96; C 3/30/2000. (M99-1; Am. 2001-1).

848.0041 Income Approach. Payments by a lessee to a lessor which the latter uses to make payments on improvement bonds, the proceeds of which were used to finance improvements benefiting the leased property, constitute income to the lessor. C 7/23/96.

848.0042 Income Approach. Lease payments which a lessor uses to retire improvement bonds that are a lien against the leased property constitute income to be capitalized in calculating value using the income approach. C 7/23/96.

848.0060 Mello-Roos Charges. Under the Mello-Roos Community Facilities Act, a district may issue bonds or otherwise incur debt obligations which provide funds to finance public improvements. The debt is repaid with moneys received from property owners benefiting from the improvements, which moneys are defined in Government Code section 53340 as special taxes, regardless of the financing method employed.

Since these payments imposed are for special taxes, they are distinguishable from the more common payments for improvement bonds and should not be used as an adjustment to a sale price when determining the value of a property by the comparable sales approach. C 6/2/94.

848.0075 Possessory Interest. The purchase of a possessory interest in government-owned land and of a privately-owned but partially destroyed structure located thereon constitutes a change in ownership. The new base year value of the possessory interest may be determined by various approaches to

VALUATION METHODOLOGY (Contd.)

value. However, when the direct comparison method, a sales approach to value, is employed, the price paid must be augmented by the present worth of any unpaid future contract rents for the estimated remaining term of possession and by any other obligations assumed by the purchaser. When the possessory interest rent is a percentage of the gross revenue from the total property, it is appropriate to estimate anticipated income from the improvement in its restored condition in determining future contract rents to be paid. C 10/20/95.

850.0000 VALUE

See Assessment

Full Cash Value

850.0001 Appraisal of Partial Interest Transfer. For the purpose of assessment, an assessor is required by law to determine the full value of real property based on valuation of the entire appraisal unit. If a 25 percent interest in a property underwent a change in ownership, it would be proper for the assessor to reappraise the entire parcel and allocate 25 percent of the new reappraised value to determine the new base year value of the interest transferred. A reappraisal of only the fractional portion of the appraisal unit that transferred would not necessarily reflect the full value of the property, which is the standard required by law. C 1/23/98. (M99–1).

850.0005 Appraisal Unit. Even though an assessor is not separately assessing each unit in a cooperative housing corporation, each unit constitutes an appraisal unit for valuation purposes. The individual unit should be reappraised and a base year value established when it is the subject of a change in ownership as defined in Revenue and Taxation Code section 61(h). C 10/7/82. (Am. M99–1).

850.0015 Decline in Value. A decline in the value of real property that occurs subsequent to the purchase date but prior to the first succeeding lien date must be reflected on the first lien date under section 2(b) of article XIII A of the California Constitution. Revenue and Taxation Code Section 50 should be interpreted as the general rule, applicable only in instances in which no decline in value has occurred.

Under Revenue and Taxation Code Section 75.10, the full cash value of a property on the date of a change in ownership is the new base year value (commencing with the 1983–84 assessment year). This new base year value is used for both supplemental roll purposes and regular roll purposes. If there is a subsequent value decline, the new base year value remains and values can rise back to that level without the two-percent-per-year limitation. Thus, where there is a loss of value before the first lien date, the amount entered on the regular assessment roll for the first time is simply an interim taxable value and not the new base year value. The new base year value will, of course, be used on the supplemental roll, and it will have to be retained for future determination of value purposes. LTA 5/23/86 (No. 86/36); LTA 9/25/92 (No. 92/63).

850.0016 Decline in Value. Property Tax Rule 461 specifies the appropriate appraisal units for measuring value declines in a cable television system pursuant to the mandate of Proposition 8 of November 7, 1978. C 1/30/96.

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850.0017 Decline in Value. When fruit trees in an orchard decline in value other than as the result of disaster, misfortune or calamity, they may still qualify for a reduction in their factored base year value if they are removed or if the full value of the appraisal unit of which they are a part is lower than the factored base year value for the unit. Pursuant to Property Tax Rule 461(d), machinery, fixtures, and other equipment classified as improvements are considered a separate appraisal unit. Trees, structures, and the land on which they are situated are also an appraisal unit, even though the unit value is allocated to each component on the assessment roll. C 9/5/89.

850.0018 Decline in Value. A factored base year value that exceeds the market value of a property should be reduced to reflect substantial damage, destruction or other factors, such as an economic recession, causing the decline in value. The law does not require the assessor to annually reappraise all property; but reductions should be made when the assessor knows of specific properties, the values of which have declined. LTA 3/20/92 (No. 92/24).

850.0019 Decline in Value. A decline in the market value of a property that results from the effect of governmental regulation and impacts the present and potential future owners' ability to receive income should be reflected on the assessment roll. Such a situation is distinguishable from one in which a long term lease results in a contract rent that is lower than economic rent. In the latter instance, the lessor's interest loses value but the market value of the total property, i.e., the interests of the lessor and lessee, is not diminished. C 7/2/86.

850.0020 Decline in Value. In determining whether or not there has been a decline in the value of a given property, the assessor is not limited in the value approaches used so long as they provide reliable indicators of value. C 11/27/89.

850.0029 Leasehold Interest. The assignment of a leasehold interest in real property with a remaining term of 38½ years is a change in ownership pursuant to Revenue and Taxation Code section 61(c). As a result, the assignee of a leasehold interest with a term of more than 35 years is considered the owner of the property for change in ownership purposes, and the interest is assessable to the assignee. Upon a change in ownership, Revenue and Taxation Code section 110 and Property Tax Rule 2 require the real property interest transferred to be reassessed at full cash value which is defined as its unencumbered, unrestricted fee simple value. The value of the leased-fee interest encumbered by below-market rents is not considered. C 1/13/2003. (2004-1).

850.0030 Lesser of Market Value or Factored Value. Property Tax Rule 461(d) indicates when a loss in value may be enrolled. This occurs when the market value of the appraisal unit (as a unit) is less than the current lien date factored value. For this purpose, machinery and equipment constitute an appraisal unit, and when the market value of the total unit is less than the factored base year value of the total unit, the current market value may be enrolled. C 4/8/80.

850.0031 Lesser of Market Value or Factored Value. The enrolled value of newly-acquired property having a fair market value of \$100,000 in July but a

VALUE (Contd.)

March 1 value of only \$80,000 should be \$80,000. It should be noted, however, that that value is the Proposition 8 value and that the base year value is \$100,000. C 6/30/82.

850.0045 **Notice.** Revenue and Taxation Code Section 619 requires the assessor to notify assesseees of increases in assessed values. The requirement is also applicable when assessed values rise following enrollments of declines in value. LTA 11/24/93 (No. 93/71).

850.0060 **Purchase Price Presumption.** The presumption that a purchase price is “full cash value” or “fair market value” as provided for in Revenue and Taxation Code Section 110(b) applies to all equalization hearings in progress or held subsequent to January 1, 1989, even if the fiscal years and protested assessments relate to periods prior thereto. C 5/10/89.

850.0080 **Taxable Value Less than Trended Base Year Value.** The enrollment of a taxable value that is less than the trended base year value does not establish a new base year value when the decline in value is attributable to economic conditions. LTA 8/28/79 (No. 79/143).

850.0090 **Transferable Development Rights.** Whether or not the base year value of the property of a seller of transferable development rights (TDRs) should be reduced depends upon whether, as a factual matter, the base year value reflected any value for such TDRs. C 2/22/94.

850.0100 **Undivided Interests.** The proper method of determining the base year value of an undivided interest in real property is to first appraise the entire property as of the date of the change in ownership at its fair market value and to then allocate to such interest that percentage of the value that corresponds to the percentage of the interest vis-a-vis all interests in the property. C 1/12/83.

860.0000 VESSELS

860.0001 **Documented.** A documented vessel used to transport scuba divers does not qualify for preferential assessment under Revenue and Taxation Code Section 227. C 1/31/80.

860.0002 **Documented.** A documented vessel used for oceanographic research must be so classified by the United States Coast Guard. If the vessel is so used and physically qualified on the lien date, delay in obtaining the formal classification does not disqualify the vessel for preferential assessment under Revenue and Taxation Code Section 227(b). C 3/29/95.

860.0010 **Filing For Preferential Assessment.** The dates specified in Revenue and Taxation Code sections 255(c) and 275.5 for filing for preferential assessment of a vessel cannot be waived by the assessor even if the taxpayer’s failure to timely file resulted from erroneous information provided by the assessor’s staff. Further, the assessment cannot be changed since it is not a clerical error. Relief, if available, must be obtained from the board of supervisors or a court of law. C 9/23/96.

VESSELS (Contd.)

860.0020 **Exemption.** Vessels, over 50 tons burden, under contract to ferry drilling crews to and from offshore drilling facilities or hauling supplies and equipment to offshore drilling sites qualify for exemption under section 3(1) of article XIII of the California Constitution. C 1/31/80. (Am. M99-1).

860.0021 **Exemption.** Exemption requires that an appropriately sized vessel be used for the carrying of freight (property transported by a carrier from a consignor to a consignee) or passengers (travelers by some established conveyance) for hire (*Dragich v. Los Angeles County* (1939) 30 Cal.App.2d 397). When the vessel is used by a subsidiary corporation to transport for hire the property of a parent corporation, the relationship between the subsidiary corporation and the parent must be examined to determine whether the subsidiary corporation is an independent corporation or whether the subsidiary corporation is a mere instrumentality, conduit, or agent for the parent corporation. If the corporate entity of the subsidiary corporation can be disregarded, the parent and subsidiary can be treated as one unit, thus defeating any claim that the vessels are transporting freight for hire. C 10/22/86. (Am. M99-1; 2000-2).

860.0022 **Exemption.** The phrase “engaged in the transportation of freight or passengers” has been interpreted by the courts to mean “engaged in the transportation of property or persons for hire.” While the California Constitution does not expressly require that exempt vessels be used “exclusively” for transportation purposes, the cases speak in terms of “primary,” “principal,” or “predominant” use. Thus, when an appropriately-sized vessel engages only partially in qualifying transportation activities, it will qualify for the exemption provided by section 3(1) of article XIII thereof only if the vessel is *primarily* engaged in such activities. In order for the vessel to be found to be “primarily engaged” in qualifying transportation, it must spend more than 50 percent of its time in such activity. C 2/8/2000. (2001-1).

860.0025 **Homeowners’ Exemption.** While Revenue and Taxation Code section 218 permits the application of the homeowners’ exemption to personal property, there is nothing in its language to indicate that a vessel qualified for the documented vessel exemption contained in Revenue and Taxation Code section 227 may qualify for both exemptions at the same time. The vessel owner must elect and properly claim one of the exemptions. C 4/18/77. (M99-1).

860.0040 **Preferential Assessment.** A vessel exclusively engaged or employed in the taking and possessing of a living resource of the sea, such as oysters, is eligible for preferential assessment, even if not owned by the person doing the taking. A vessel at sea used to facilitate pumping of sea water inland to supply inland oyster beds would also qualify because food (a living resource of the sea) is being brought to the oysters for a commercial purpose. C 8/27/79.

860.0043 **Situs.** When a vessel is registered with the Coast Guard and the vessel owner is domiciled in California, the vessel has tax situs in California. If the vessel is relocated to a foreign country, the vessel will continue to be taxable in California until the vessel becomes habitually moored at some other location

VESSELS (Contd.)

such that it acquires situs at that location and the owner establishes to the assessor that the vessel has acquired situs elsewhere. C 3/27/98; C 7/15/2003. (M99-2; Am. 2004-1).

860.0045 Spare Parts. Spare parts, for vessels that qualify for exemption under section 3(l) of article XIII of the California Constitution are considered part of the vessel when on board and thus, qualify for exemption. Spare parts ashore do not qualify for the exemption. C 5/22/75. (M99-1).

860.0060 Valuation. The current fair market value of a vessel is measured by what it would cost to place the vessel in the hands of a consumer as of the lien date. Thus, charges such as sales and use taxes or freight charges should be included in the fair market value of a vessel, regardless of whether they were actually paid. C 11/24/2003. (2004-1).

865.0000 VETERANS' EXEMPTION

865.0010 Eligibility. To be eligible for the exemption, a person must be currently serving in or have served in the Armed Forces enumerated in section 3(o) of article XIII of the California Constitution during one of the time periods specified in Revenue and Taxation Code section 205. The exemption may not be applied to property receiving the homeowners' exemption; and it may not be applied to any property of a single person who owns property valued at \$5,000 or more, or to any property of a married person, who, together with the spouse, owns property valued at \$10,000 or more. C 1/20/89. (M99-1).

865.0020 Husband and Wife. In instances in which both a husband and a wife are qualified veterans and owners of the same home, each may claim and receive the exemption with respect to the home. C 8/9/78.

870.0000 VETERANS' ORGANIZATION EXEMPTION

870.0001 Billiard and Card Rooms. Billiard rooms, card rooms and other rooms used for social club purposes are not eligible for the exemption. C 1/21/80; C 10/13/94.

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880.0000 WELFARE EXEMPTION

*See Possessory Interest
Rental Housing Exemption*

880.0001(a) IN GENERAL

880.0002 Actual Operation of Exempt Activity. Revenue and Taxation Code section 214(a)(3) was amended in 1990 to provide that for purposes of determining whether property is used for the actual operation of the exempt activity, consideration shall not be given to the use of property for meetings conducted by any other organization, if the meetings are incidental to the other organization's primary activities, are not fundraising meetings or activities, are not held more than once per week, and the other organization and its use of the property meet the requirements of section 214(a)(1)–(5). The owner of the property or the other organization, however, must file copies of valid, unrevoked letters or rulings from the Internal Revenue Service or Franchise Tax Board stating that the other organization, or the national organization of which it is a local chapter or affiliate, qualifies as an exempt organization under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code or section 23701d or 23701f of the Revenue and Taxation Code, together with duplicate copies of that organization's most recently filed federal income tax return, if the organization is required by federal law to file a return. C 7/18/95; C 6/30/97. (Am. M99–1).

880.0005 Assessment Appeals Board Jurisdiction. Jurisdiction to make determinations and findings on the eligibility of property for the welfare exemption lies exclusively with the State Board of Equalization and the assessor, who jointly administer the exemption under Revenue and Taxation Code section 254.5. A finding by the Board staff that property is ineligible for the exemption is appealable only to the Board. A finding by an assessor that property is ineligible for the exemption is not appealable to an assessment appeals board. That denial is grounds for the filing of a claim for refund as well as for a suit for refund, but not for a hearing by a local board. C 3/11/94. (M99–1).

880.0016 Bingo. Revenue and Taxation Code Section 215.2 permits the conduct of certain bingo games on property that otherwise qualifies on the basis of a charitable or religious use and ownership by a qualifying organization. Bingo can only qualify as a secondary activity, and that activity must conform to the provisions of Penal Code Section 326.5. Although there is no duty on the assessor's part to ascertain conformance to the Penal Code, exemption should not be granted in any city or county that has not adopted a local ordinance which authorizes the conduct of bingo games. In nonauthorizing localities, the guidelines of the May 26, 1976, Letter to County Assessors, No. 76/94, are still applicable. LTA 7/14/77 (No. 77/100).

880.0017 Bingo, Definition.

1. The term "bingo," as used in Section 19(c) of Article IV of the California Constitution, refers to a particular game of that name commonly played in California when the voters added Section 19(c) in 1976 and does not embrace any

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IN GENERAL (Contd.)**

other game or activity included in the legislative definition of bingo contained in the first sentence of Penal Code Section 326.5(n).

2. The 1979 amendment of Penal Code Section 326.5(n) including punch-boards in the legislative definition of bingo exceeded the authority of the Legislature to permit charitable bingo granted by the 1976 amendment of the Constitution. OAG 6/26/80 (No. 80-115, Vol. 63, p. 524).

880.0018 Bingo, Definition. A charitable organization may not conduct a bingo game known as “progressive power ball bingo” in which a game winner may receive more than \$250 in prizes. OAG 7/19/99 (No. 98–1202, Vol. 82, p. 132). (2001–1).

880.0030 Church-Related Schools.

1. (a) County assessors may constitutionally require church-related schools to file factual statements on prescribed forms as a condition to allowing such schools a property tax exemption. The exemption forms attached to the request appear to be reasonably necessary for that purpose. The “church exemption” is not applicable to church-related schools. Therefore, the forms attached to the request relating to that exemption are not pertinent herein.

(b) An institution which claims that it is exempt from property taxation has the burden of demonstrating its exempt status.

2. The State of California can constitutionally require church-related schools to file form 199B, “Exempt Organization Annual Information Statement”, as a condition to allowing such schools an exemption from the state franchise tax. OAG 11/9/79 (No. 79-508, Vol. 62, p. 690).

880.0042 City-Owned Corporation. A city-owned corporation is nevertheless a separate entity and must meet the organizational and property use requirements of Revenue and Taxation Code Section 214 in order for its property to be eligible for exemption. C 10/16/87.

880.0043 City-Owned Corporation. A city-owned convention and visitors bureau corporation organized and operated to promote tourism and conventions in a city is not engaged in a charitable activity. Further, if its property is used for fund-raising purposes, such use is disqualifying. In order for its property to be eligible for exemption, the corporation must itself satisfy all the requirements of Revenue and Taxation Code Sections 214 or 231, or the corporation’s property must be exempt because of a specific section, for example, Revenue and Taxation Code Sections 201.1, 201.2 or 201.3. C 10/19/87.

880.0050 Conditional Deeds. A grant deed to an organization qualified for the welfare exemption which contains a right in the grantor to reenter the land and terminate the donee’s interest within 25 years under specified conditions does not constitute a “reversionary provision” referred to in Revenue and Taxation Code Section 214.3. A “reversion” as defined in Civil Code Section 768 is the residue of an estate left by operation of law that commences in possession on the

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termination of the estate granted. The right to terminate an estate on the breach of a condition is not an estate of any kind. C 5/31/89.

880.0060 Construction in Progress. As of January 1, 1992, Revenue and Taxation Code Section 214.2(b) defines “facilities in the course of construction” to include those where construction has commenced but that are not yet finished and have not been abandoned. Construction is not considered abandoned if delayed due to reasonable causes and circumstances beyond the assessee’s control, that occur notwithstanding the exercise of ordinary care and the absence of willful neglect. LTA 4/9/92 (No. 92/30).

880.0061 Construction in Progress. For purposes of the exemption, “in the course of construction” refers to that period of time between the commencement and the completion of the building and includes definite, onsite physical activity connected with the construction or rehabilitation of a new or existing building or improvement. The statutory language in section 214.2(b) allows a property to qualify for the exemption in a situation in which construction has commenced but has then been halted, provided that the claimant submits evidence that reasonable causes or circumstances beyond its control prevented the continuation of construction. There is no specific provision for a situation in which circumstances beyond the claimant’s control cause a delay in commencing the physical onsite activity; therefore, construction must have commenced for the section 214.2(b) provision to take effect. C 8/23/2001. (2003-1).

880.0065 Corporations Chartered by Act of Congress. Revenue and Taxation Code section 214.01 was amended to provide that the required irrevocable dedication clause may be contained in the bylaws, articles of association, constitution, or regulations of a corporation chartered by an Act of Congress. This permits corporations chartered by an Act of Congress to comply with the requirements of section 214.01 without amending their articles of incorporation, which would necessitate an Act of Congress. C 2/24/2004. (2005-1).

880.0072 Co-ownership. Real property transferred by will to a welfare organization and a college as joint owners is not eligible for the welfare exemption or the college exemption. Both of these exemptions are exclusive use exemptions; ownership alone is not sufficient. While the welfare exemption does require ownership, it also requires use for exempt purposes and activities and may not be applied in a manner that would result in enlarging the college exemption. C 10/29/86.

880.0080 Dissolution Clause. A dissolution clause whereby property of a welfare-exempt organization will be distributed to the federal or a state or local government does not run afoul of Revenue and Taxation Code Section 214(6) in that such proposed distributees are governmental entities, not private persons. C 10/25/82.

880.0081 Distribution to Government Entity Upon Dissolution. A dissolution clause that authorizes distribution of a nonprofit organization’s assets to

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IN GENERAL (Contd.)**

charitable and/or public or charitable and/or public benefit purposes is nonqualifying, as not all public or public benefit purposes are charitable. However, distribution to a specified government entity is acceptable since no private inurement results. C 12/13/2002. (2004–1).

880.0095 Document Disclosure. Claim forms and documents submitted in support of the claims, including articles of incorporation, financial statements, income tax exemption letters, and correspondence between the Board and claimants or their attorneys, are public records subject to disclosure pursuant to the Public Records Act since there is no specific provision of law that provides for their confidentiality. Should the Board or the county assessor make an additional request for information, such information also would be subject to public disclosure. C 3/25/99. (2000–1).

880.0099 Exclusive Use. Revenue and Taxation Code section 214(a) requires that property for which the welfare exemption is claimed be used exclusively for religious, hospital, scientific, or charitable purposes. If a property is used primarily for exempt purposes, the term “exclusively” does not preclude activity that is merely incidental to the charitable purpose. However, uses found to be largely commercial in nature are viewed as disqualifying uses. If a portion of the museum is used for a fee by for-profit corporations, other non-exempt organizations, and individuals for business social functions, receptions, and private parties, the museum is eligible for a partial exemption. Areas of the museum that are not used exclusively for the exempt purpose do not qualify for exemption. C 12/1/2006. (2007–1).

880.0101 Filing Requirements. A claimant organization which on the lien date had a possessory interest in publicly-owned land, owned a water right, or owned improvements on land owned by another should be allowed to file copies of the documents creating such interests with the county assessor until the next succeeding lien date after the lien date for which exemption is being sought. The filing with the assessor is in lieu of filing with the county recorder as required by Revenue and Taxation Code Section 261(a). C 7/24/87.

880.0102 Filing Requirements—Late Filing. Revenue and Taxation Code section 270 does not limit the number of years for which an organization may file late claims for exemption. There is no effective statute of limitation on the filing of such claims other than the four year claim for refund limitation following the payment of the tax, if applicable. C 5/11/98. (2000–1).

880.0110 Indian Lessees. Property which is not located on an Indian reservation, is owned by non-Indians, and is leased to a tribal health organization to provide health care services to Indians is not immune or exempt from property taxation. The local government’s interest in taxation of such property outweighs federal and tribal interests in self-determination. Thus, the local government’s jurisdiction to tax property is not preempted by federal and tribal jurisdiction over Indian affairs. A tribal health organization is not a federal instrumentality whose owned property is immune from state and local taxation; and, even if it were a

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federal instrumentality, property which it leases would not be immune. With regard to the welfare exemption and eligibility therefor, in cases where property is owned by one entity but operated by another entity, both entities must file a claim for and qualify for the welfare exemption. C 4/14/97. (M99–1).

880.0115 **Irrevocable Dedication and Dissolution Clauses.** A statement of irrevocable dedication to charitable and/or public, or charitable and/or public benefit purposes is nonqualifying for purposes of the welfare exemption. Revenue and Taxation Code section 214.01 requires property to be irrevocably dedicated to only religious, charitable, scientific or hospital purposes. Similarly, a dissolution clause that authorizes distribution of a nonprofit organization's

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assets to charitable and/or public, or charitable and/or public benefit purposes is too broad, as not all public or public benefit purposes are charitable. C 12/13/2002. (2004–1).

- 880.0126 **Lease.** Statutes of 1979, Chapter 393, expanded Revenue and Taxation Code section 214.6 to include property which is owned by a welfare-exempt organization but leased to a community college, a state college, or a state university (public schools) for educational purposes.

If the property is used by the school exclusively for public school purposes, the school may file for the public school exemption, or the welfare-exempt organization may file the lessors' exemption claim with the affidavit signed by the school. If the property is not used exclusively by the school (i.e., the welfare-exempt organization uses the property in the evening or on weekends), the organization must file a welfare claim, and a copy of the lease agreement should accompany the claim. LTA 1/11/80 (No. 80/2).

- 880.0127 **Lease.** Equipment supplied by a for-profit entity to an organization qualified for the exemption may or may not be eligible for exemption, depending upon whether the agreement between the parties is a sale or a lease. The agreement form is not controlling, and the determination of the proper classification of the agreement should be based on the intent of the parties as reflected by the preponderance of the agreement terms. The term of possession, the amount of payments to be made, the tax treatment afforded the equipment on the supplier's books, and all the relevant aspects of the agreement should be considered. C 8/11/87.

- 880.0128 **Lease.** Property leased for a term of 35 years or more to an organization qualified for the exemption by a person who is not qualified for the exemption remains ineligible for the exemption. While the execution of a 35 year lease constitutes a basis for reappraisal for assessment purposes, it does not make the lessee an owner of the property, as is required for exemption. C 12/27/84.

- 880.0129 **Lease—Grazing.** Property that is subject to a cattle grazing lease does not qualify for the welfare exemption because the property is not exclusively used for an exempt purpose. C 1/17/2007. (2008–1).

- 880.0140 **Library and Museum.** Revenue and Taxation Code section 214 now extends the exemption to property owned by a religious or charitable organization and used for museum or library purposes. *Free public* libraries and *free* museums continue to be exempt under Revenue and Taxation Code section 202(b). Where, however, a library is not a public library and/or a library or museum charges admission, the exemption may be applicable if all the requirements of section 214 (i.e., articles of incorporation, irrevocable dedication, tax letter, financial documents, etc.) are met. LTA 11/13/79 (No. 79/199).

- 880.0144 **Limited Equity Cooperative Housing Corporation.** Property owned by cooperative housing corporations, including limited equity cooperative housing corporations, that is eligible for the homeowners' exemption under

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Revenue and Taxation Code section 218 is not property used exclusively for rental housing and related facilities within the meaning of Revenue and Taxation Code section 214(g). Thus, property that is owned and used by a cooperative member as a primary residence is ineligible for the welfare exemption. However, any mobilehome spaces or dwellings held by the cooperative that are rented at prescribed rent levels to qualifying lower income tenants who are not cooperative members may qualify for the exemption, provided that all other requirements for the exemption are met. C 3/26/2004. (2005–1).

880.0147 Limited Liability Company. A limited liability company has two basic organizational documents: an operating agreement and the articles of organization (a statutorily-prescribed Secretary of State form). A limited liability company comes into existence when its articles of organization are filed with the Secretary of State. Corporations Code section 17051(c) authorizes the inclusion of optional matters in the articles that directly relate to Property Tax Rule 136 requirements.

To qualify for exemption, claimants that filed the articles of organization prior to the effective date of Rule 136 and the statutory amendments to Revenue and Taxation Code section 214 must amend their articles of organization if the articles do not include the requirements of Rule 136. C 7/12/2005. (2006–2).

880.0150 Lobbying Activity. Organizations claiming the exemption may satisfy the exemption requirements even though they engage in lobbying activities, provided that (1) the lobbying is directly connected with the furtherance of their exempt purposes, and (2) the salaries paid lobbyists are not excessive. C 8/5/82.

880.0155 Low Income Housing. A proposed Payment In Lieu of Tax (PILOT) Agreement between a county and an owner of a low income housing project that qualifies for the welfare exemption is invalid because it is not authorized by the California Constitution or any statute. The PILOT agreement specifies that the payment is a tax and, therefore, constitutes a waiver of the welfare exemption. The agreement would also disqualify the property for the exemption as the owner would not be able to satisfy the certification required by Revenue and Taxation Code section 214(g)(2)(B) because the payment would be made pursuant to the PILOT agreement. Thus, no funds would be used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower-income households. C 9/19/2003. (2004–1).

880.0160 Management Contract. When a corporate owner of a senior housing development hires a separate corporation to manage its facility, the agreement between the two corporations must be examined to determine if the hired corporation is an independent operator or a manager that is, in fact, the agent of the owner. If the manager is the owner's agent, then only the owner need qualify and file for exemption. C 11/12/87.

880.0166 Managing General Partner. Revenue and Taxation Code section 214(g)(1) provides exemption from property taxes for property used to provide low-income housing and related facilities owned and operated by limited partnerships in which the managing general partner is an eligible nonprofit

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corporation. To be a managing general partner, the nonprofit corporation should possess the authority to exercise some substantial management duties over some aspect of the partnership business on a day to day basis. This authority may be shared to some extent with other general partners in the limited partnership. C 2/17/2000. (2001-1).

880.0170 Maximum Tax, Penalty, or Interest of \$250. Application of the \$250 maximum tax, penalty, or interest provisions of Revenue and Taxation Code Sections 270(b) and 271(c) when the owner and the operator are separate entities and the owner files timely but the operator files late is as follows:

1. The operator is entitled to relief under Section 270 or Section 271, as applicable, and in no case shall any tax or penalty or interest on the operator's property exceed \$250 in total amount. Usually the operator's property consists solely of its personal property.

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2. The owner, who has filed timely but who is not eligible for 100 percent exemption on the portion of the property used by the operator who filed late, is entitled to relief under Section 270 or Section 271, as applicable, and in no case shall any tax or penalty or interest on the owner's property exceed \$250. LTA 2/29/80 (No. 80/31).

880.0173 Multiple Limited Partnerships. Lower income housing owned by a limited partnership and operated by another limited partnership may qualify for the welfare exemption under subdivision (g) of Revenue and Taxation Code section 214, but both limited partnerships must meet all the requirements for exemption. Section 214(g) requires the property to be both owned and operated by a qualifying entity.

A qualifying limited partnership for purposes of section 214(g) must have (1) an eligible nonprofit corporation as the managing general partner; (2) a limited partnership agreement that designates such nonprofit corporation as the managing general partner, and (3) an agreement that provides the nonprofit managing general partner with management authority over the partnership operations and specific management duties. In addition, the nonprofit managing general partner of each limited partnership must file claims for the exemption. C 3/4/2003. (2004-1).

880.0175 Multiple Users. If a qualified organization owns a single story building and uses one-half of it for exempt purposes and activities, that half is eligible for exemption. If the other half is vacant, used by a non-qualified organization, or used by a qualified organization for non-qualified purposes and activities, the building would be, to that extent, ineligible for exemption.

A multi-storied building is likewise eligible for exemption to the extent it is used for exempt purposes and activities by a qualified organization. Associated parking facilities used on a random basis by both qualified and non-qualified organizations are not eligible for exemption. C 4/10/92.

880.0176 Multiple Users. If an outside organization makes use of exempt property on a frequent and regular basis, it is an operator of the property, and is required to file its own exemption claim and to meet all the requirements for exemption in order for the property to remain exempt. An exception is that if the use is a "meeting" no more than once per week and the organization qualifies under Revenue and Taxation Code section 214(a)(3)(D), that use is excluded from consideration. Occasional activities and events by others that do not constitute "operation" of the property should be analyzed for incidental use, or under the fundraising or meeting provisions of section 214. C 9/2/99. (2001-1).

880.0190 Net Earnings. Constitutional provisions and case law amply support the proposition that no part of the net earnings of a qualifying organization may inure to the benefit of any private shareholder or individual, regardless of the facts that its shareholders also are qualifying organizations and that all its assets could be distributed to its shareholders upon dissolution. C 7/22/83.

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880.0200 Owner and Operator. Where property owned by a qualifying organization is also used by other organizations, all of such other organizations must be qualifying organizations, and all of such other organizations which use the property on a regular basis must file claims as operators of the property in order for the property to retain its exempt status. C 2/1/78.

880.0202 Owner and Operator. As a result of Revenue and Taxation Code Section 214(e), for the 1986–87 fiscal year and fiscal years thereafter, property owned by a college and used by a church for religious purposes or used by a hospital for hospital purposes or used by a charitable organization for charitable purposes can qualify for the welfare exemption. But property owned by a qualifying religious, hospital, scientific, or charitable organization and used by a college for educational purposes of collegiate grade continues to be ineligible for the welfare exemption since educational purposes of collegiate grade are not religious, hospital, scientific or charitable purposes. LTA 6/13/86 (No. 86/45).[▲]

880.0204 Owner and Operator. A qualifying organization's purchase of a conservation easement over a property and use of the property for exempt activities will not make the property eligible for the exemption where the seller retains legal title to the property and is not a qualifying organization. C 1/7/82.

880.0205 Owner and Operator. The ownership of a multi-space parking garage by an entity eligible for the welfare exemption and by a for-profit entity disqualifies the entire garage for the exemption even though the qualified entity has by agreement with the co-owner exclusive use of 43 percent of the spaces. The requirements for exemption are ownership and use by a qualified organization or organizations. C 2/2/89.

880.0206 Owner and Operator. Shared ownership of properties by governmental entities and non-governmental entities qualified for the welfare exemption will not prevent application of the welfare exemption to the portions owned by the non-governmental entities, provided the properties are put to exempt uses and all requirements are met.

Property placed in trust for the benefit of a governmental agency or agencies and/or organizations qualified for the welfare exemption is exempt based on the status of the beneficiary. The trustee holds legal title but the beneficiary is the equitable owner of the property for property tax purposes. C 3/11/91.

880.0207 Owner and Operator. A mutual benefit corporation operating government-owned real property is not a qualifying nonprofit corporation for purposes of Revenue and Taxation Code section 214 and hence, its taxable possessory interest in the property is not eligible for exemption. C 2/6/98. (M99–1).

880.0208 Owner and Operator. The exemption has historically been administered on an entity basis, applying to property owned by qualifying community chests, funds, foundations, and nonprofit corporations. Unlike the law relating to change in ownership for purposes of real property (Revenue and

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Taxation Code sections 60 et seq., and particularly section 64(c)), there is no “ultimate control” provision in the welfare exemption statutes which would allow the exemption to apply to property owned by a corporation having a qualifying majority stockholder. Rather, qualifying nonprofit corporate ownership and use of property are the determinative factors. In addition, Revenue and Taxation Code section 261 specifically requires that the claimant seeking the exemption be the owner of record of the property on the lien date, and a majority stockholder is neither the owner of corporate property nor the owner of record. C 3/25/99. (2000-1).

880.0225 Parking Lot. If an otherwise eligible parking lot is used both by qualifying and nonqualifying organizations, the property’s use is mixed, not exclusive, and the entire property is ineligible for the exemption. On the other hand, if a portion of a parking lot is used exclusively by the qualifying organization, and if the remaining, separate portion is used exclusively or otherwise by a nonqualifying organization, that separate portion of the parking lot used exclusively by the qualifying organization is eligible for the exemption. C 5/28/92.

880.0227 Partnerships. Properties of partnerships are not eligible for the exemption, except as provided in Revenue and Taxation Code section 214(g). C 7/13/89. (M99-1).

880.0230 Property Acquired After Beginning of Fiscal Year. Revenue and Taxation Code Section 271(a)(3) provides relief from property tax imposed upon property so acquired by an organization qualified for the exemption, a religious, hospital, or scientific organization or a charitable community chest, fund, foundation, or corporation. A limited partnership owning property on the March 1 lien date and thereafter adding an eligible nonprofit corporation as a general partner is not eligible for relief under that section. C 3/1/94.

880.0231 Property Acquired After Beginning of Fiscal Year. Revenue and Taxation Code Section 271(a)(3) applies to secured roll personal properties as well as to secured roll lands and improvements acquired by Welfare organizations and certain other organizations after the beginning of a fiscal year and subject to property taxes for that year, and all are entitled to pro-rata exemption thereunder, assuming that all the requirements for exemption are met. Property taxes for personal properties on the unsecured roll are the obligations of the persons to whom those properties are assessed on the lien date, and Welfare organizations and other organizations that acquire unsecured roll personal properties, whether before or after the beginning of a fiscal year, do not take them subject to any liens and hence, do not become liable for payments of any unpaid property taxes with respect to those properties. Thus, circumstances that give rise to the application of Section 271(a)(3) do not exist, and resort thereto is neither contemplated nor necessary in such instances. C 1/17/95.

880.0235 Property in Its Natural State. The fact that an owner of property that is otherwise qualified for the exemption provided for in Revenue and Taxation

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Code section 214.02 receives payments from the federal government for maintaining the property as open space does not interfere with the eligibility of the property for exemption. C 8/2/95.

880.0245 Public School Use. Property owned by the California School Boards Association, a California nonprofit corporation, and used for the benefit of school board members as school board members may be eligible for the welfare exemption even though it may also qualify for the public schools exemption. C 2/28/90.

880.0255 Public School Use of Claimant's Property. The lease of property by an otherwise qualified claimant to a school district for public school purposes does not abrogate the exemption, provided, that the rental charges are not intentionally profit-making or commercial in nature.

A lessors' exemption claim need not be filed by the claimant; however, a copy of the lease agreement should accompany the welfare claim. LTA 4/4/77 (No. 77/55).

880.0266 Recorded Deed Restriction. A Preliminary Reservation Letter issued by the California Tax Credit Allocation Committee to owners of low income housing may serve to meet the requirement of an "enforceable and verifiable agreement with a public agency" in Revenue and Taxation Code section 214(g)(2)(A). C 3/21/2001. (2002-1).

880.0267 Recorded Regulatory Agreement. For purposes of Revenue and Taxation Code section 214(g)(1)(A), properties which have received low-income housing tax credits, whether federal or state, are eligible for exemption for the duration of the regulatory agreement that restricts the property's use for rental to lower income households. Assuming that the terms of the regulatory agreement are consistent with section 214(g) and that the property continues to be used in compliance with those terms, the exemption should apply to the percentage of units used for rental to lower income households as long as the regulatory agreement is in effect, regardless of whether the property continues to receive the credits. Thus, property which received federal low-income housing tax credits for a 15-year period that has expired may continue to receive the exemption if the property is subject to a regulatory agreement that restricts the use of the property for rental to lower income households. C 3/2/2006. (2007-1).

880.0270 Rental Proceeds. A church's use of nominal rental proceeds received from a qualifying organization that operates a day care center on church premises is not restricted to use for only the day care portion of the property. However, rental charges that amount to more than the cost of maintaining the day care portion could affect the determination as to whether use of the premises for the center is a qualifying charitable use. C 10/12/99. (2001-1).

880.0276 Sale After Lien Date. Once qualification for the exemption has been established as of the lien date, the property is exempt for the fiscal year. However, if property that qualified for exemption on the lien date is sold after the lien date

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and no longer qualifies for the exemption, the property becomes taxable as of the transfer date, unless the new owner and the property qualify for exemption as of the date of acquisition. C 11/3/2004. (2005-2).

880.0281 **Statement of Irrevocable Dedication.** The purpose behind Revenue and Taxation Code section 214.01 was to substitute a specific statement of irrevocable dedication requirement for the rather subjective test of “construing the articles of incorporation as a whole to imply dedication” of a corporation’s property. Thus, the Board and Board staff have from its enactment in 1966 construed “only if a statement of irrevocable dedication to only these purposes is found in the articles of incorporation of the corporation” as set forth in section 214.01 literally, with one exception. Absent such a statement, all the requirements for exemption are not met, and no exemption will be granted. C 1/22/97. (M99-2).

880.0283 **Student Union.** A student union of the California State University system that is a California nonprofit public benefit corporation does not qualify for exemption under Revenue and Taxation Code section 214, which requires that an organization’s primary purpose must be either religious, hospital, scientific, or charitable. In order for educational activity to be charitable as provided in section 214(j), that activity must benefit the community as a whole or an unascertainable and indefinite portion thereof. Services provided by a student union primarily benefit the students attending the university, not the community as a whole. However, as an auxiliary organization of the California State University, the student union may be eligible for the state university exemption under Revenue and Taxation Code section 202(a)(3). C 6/13/2006. (2007-1).

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880.0290 Unrelated Business Taxable Income. Property that is otherwise eligible for the exemption is ineligible to the extent it is used to generate income subject to federal or state income taxes. However, the fact that property does not generate taxable income does not make it exempt from property taxes. Exemption is applicable only if all of the requirements of Revenue and Taxation Code Section 214 are met. C 8/30/91.

880.0291 Unrelated Business Taxable Income. If an organization whose property is otherwise eligible for exemption receives taxable unrelated business income, i.e., income after expenses, from the use of a portion of that property, it will receive only a partial exemption for the portion so used.

Once unrelated business taxable income is produced, the exemption for the portion so used will be granted in the same proportion as gross exempt income from that portion of the property bears to total gross income attributable to that portion of the property. C 6/20/89. (M99–1).

880.0300 Use. Sections 4(b) and 5 of article XIII of the California Constitution and Revenue and Taxation Code sections 214, 214.1 and 214.2 require that property be used in the actual operation of an exempt activity or be in the course of construction where the intended use will qualify the property for exemption. Vacant, unused property awaiting commencement of construction scheduled to start subsequent to the lien date is not eligible for the exemption. C 9/30/87.

880.0301 Use. Property being constructed for future exempt charitable, religious or hospital uses is, pursuant to Revenue and Taxation Code sections 214.1, considered to be so used during construction. To qualify, the construction must be ongoing, without delay and followed by actual use for qualifying purposes. Delay in construction, including delay due to lack of funds, is disqualifying. C 7/3/91; C 8/2/95.

880.0350(b) CHARITABLE PURPOSES

880.0361 Charitable. Under Revenue and Taxation Code section 214(a), the exemption is available for property used exclusively for charitable purposes, owned and operated by foundations organized and operated for such purposes if all the requirements for exemption are satisfied. The primary test of the charitable purposes aspect is whether the activity provides a general community benefit whose “ultimate recipients are either the community as a whole or an unascertainable and indefinite portion thereof.” (*Stockton Civic Theatre v. Board of Supervisors*, 66 Cal.2d 13.) This means that the class benefited must be sufficiently large that a gift to it may be considered to benefit an indefinite portion of the community.

A foundation’s purpose may be to provide grants to qualified, nonprofit, tax-exempt organizations which provide a broad range of cultural, educational, health, and human services. The grants fund community activities including, but not limited to, homeless programs, scholarships for financially disadvantaged students, and cultural activities, as well as construction and/or renovation of

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community facilities such as hospitals, schools, day-care centers, theatres, and art museums. Such a foundation's purpose of philanthropy is a charitable purpose within the meaning of section 214(a). C 10/18/2001. (2003–1).

880.0370 **Charitable.** In view of Revenue and Taxation Code Section 214.10, activities such as persuading a county health department to institute a plan of rodent eradication and a plan of building inspection to board up vacant houses, improving garbage collection efforts in vacant lots, and obtaining improved lighting in high-crime areas qualify as charitable for purposes of the exemption. C 6/15/88.

880.0390 **Fundraising.** A property that is used primarily for fundraising is not a qualifying use of property for purposes of the welfare exemption, even if the proceeds are used for charitable donations or purposes. C 12/27/2002. (2004–1).

880.0400 **Housing.** Property used exclusively for housing and related facilities for elderly and/or handicapped families and financed by the federal government pursuant to Section 8 of the Housing and Community Development Act of 1974 (Section 201 of Public Law 93-383/42 U.S.C. 1437(f)) may be eligible for the exemption. C 6/11/81.

880.0402 **Housing.** Assuming the owner/operator of a housing facility for elderly or handicapped families satisfies the organizational requirements, its property may qualify for the exemption even if it is not financed by a federal grant or loan and it is not devoted to accommodating only low- or moderate-income tenants, provided the owner/operator furnishes services designed to meet the special needs of its tenants.

Among recognized services are:

- (1) The preparation or instruction in preparation of meals.
- (2) Assistance in shopping for food, clothing and household furnishings on an "as needed" basis.
- (3) Social programs, and assistance such as temporary housekeeping for the sick.
- (4) Emergency transportation (other than ambulance service), and referral assistance when professional services are needed. C 12/30/87.

880.0403 **Housing.** A public benefit corporation that is organized for the specific purpose to preserve affordable housing, including the development and preservation of affordable mobilehome park/manufactured housing community living, is eligible for exemption within the charitable purposes aspect of Revenue and Taxation Code section 214(a). The corporation's function of assisting mobilehome park residents to purchase their park does not cause disqualification of the organization from the exemption. C 5/12/2005. (2006–1).

880.0406 **Housing.** To obtain the exemption provided for in Revenue and Taxation Code Section 214(g), the claimant must satisfy the requirements of that subdivision and the other applicable organization and operational requirements

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CHARITABLE PURPOSES (Contd.)**

of Section 214. The exemption applies only to rental housing, and the tenants may not be members of the organization that owns the property. C 1/6/88.

880.0407 **Housing.** Neither Revenue and Taxation Code Section 214 nor subdivision (g) thereof consider limited partnerships to be organizations qualified for the exemption. Section 214(g) merely recognizes certain properties as properties being within the exemption. C 3/1/94.

880.0408 **Housing.** Lower income housing owned by a limited partnership and operated by another limited partnership may qualify for the welfare exemption under subdivision (g) of Revenue and Taxation Code section 214, but both limited partnerships must meet all the requirements for exemption. Section 214(g) requires the property to be both owned and operated by a qualifying entity.

A qualifying limited partnership for purposes of section 214(g) must have (1) an eligible nonprofit corporation as the managing general partner; (2) a limited partnership agreement that designates such nonprofit corporation as the managing general partner, and (3) an agreement that provides the nonprofit managing general partner with management authority over the partnership operations and specific management duties. In addition, the nonprofit managing general partner of each limited partnership must file claims for the exemption. C 3/4/2003. (2004-1).

880.0410 **Housing.** For 1988 and thereafter, property used exclusively for an emergency or temporary shelter and related facilities for homeless persons and families will be eligible for the exemption if the requirements of Revenue and Taxation Code Section 214, including Section 214(h), are met. Section 214(h) pertains only to emergency or temporary shelters and related facilities for persons and families which are eligible for funding pursuant to Health and Safety Code Sections 50800 et seq. Rescue missions, halfway houses, shelters for abused women and/or children, etc., may be eligible for exemption under existing provisions of Section 214. LTA 7/13/88 (No. 88/54).

880.0420 **Housing.** Housing provided by a limited equity cooperative housing corporation to its members is owned by the individual corporate members who are eligible to claim and receive homeowners' exemptions. Such property is not eligible for the welfare exemption as rental housing under Revenue and Taxation Code Section 214(g). C 3/7/90.

880.0421 **Housing.** When a housing complex contains units eligible for the welfare exemption and other units eligible for the homeowners' exemption, property tax imposed on the units receiving the latter partial exemption may not be apportioned among all the units. It is contrary to case law and against public policy to deny exemption to exempt property by shifting taxes from taxable property to it. C 7/27/87.

880.0425 **Housing.** For 1985 and thereafter, property used exclusively for housing and related facilities for elderly or handicapped families and financed by the federal government is eligible for exemption without regard to which Public

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Law section authorizes the financing, provided the charitable requirements of Revenue and Taxation Code Section 214 are satisfied. C 12/11/90.

880.0429 **Housing.** Property Tax Rule 137 establishes a single uniform statewide standard for determining the exemption qualification of housing properties of nonprofit organizations. Rule 137 is consistent with both long-standing judicial precedent and Revenue and Taxation Code section 214(i). While Rule 137 is consistent with existing law, it is a departure from the Board's past practice and application of the law to property used for housing. Prior to the rule's adoption, the Board's and the assessors' application of a strict standard, rather than a strict but reasonable standard in their interpretation of existing law, had resulted in the exemption of few housing properties. Additionally, Rule 137 did not constitute a change in, but rather is declaratory of existing law; it is to be given retroactive effect. C 3/28/2003. (2004–1).

880.0432 **Housing.** Properties of nonprofit organizations which purchase single family residences from the Veterans Administration to shelter primarily homeless veterans do not qualify for the exemption unless there is an enforceable and verifiable agreement with a public agency or a recorded deed restriction that restricts the property's usage to rental to low income households, and that provides that designated units are continuously available to or occupied by lower income households at the rent levels prescribed in accordance with (Revenue and Taxation Code section 214(g)(2)(A). C 3/2/2000. (2001–1; Am. 2004–1).

Note: Chapter 601 of the Statutes of 2000 amended section 214(g) to require a minimum of 90 percent of the occupants be lower income households in order for the property to qualify for exemption.

880.0445 **Low-Cost Student Housing.** A possessory interest held by a qualified claimant in property owned by a governmental entity is eligible for the exemption. C 9/29/77.

Note: Chapter 678 of the Statutes of 1994 (in effect January 1, 1985) amended section 261(c) to allow filing with the assessor in lieu of recordation.

880.0480 **Orphanages.** An orphanage is eligible for the exemption if it meets the requirements therefor. C 12/7/79.

880.0500 **Project Headstart Program.** A church which uses part of its building for housing a Project Headstart program may qualify that part of the building for the exemption as long as the requirements therefor are met. OAG 3/6/74 (No. CV 74-16, Vol. 57, p. 119).

880.0505 **Property Leased to Government.** Upon completion of construction, streets, sidewalks, curbs, gutters, water systems, and waste water facilities may be eligible for the exemption provided by Revenue and Taxation Code Section 231 if leased to a governmental agency by a nonprofit corporation satisfying the organizational requirements of the section. During construction, these improvements would not be exempt since Section 231 relates only to buildings in the course of construction. Land or land and improvements leased to a

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governmental agency which are vacant or unused are ineligible for exemption. When improvements are exempt, then the land reasonably necessary to their use is also exempt. C 8/19/86.

880.0515 Public School Buildings Under Construction. Public school buildings under construction on the lien date are eligible for the exemption under Revenue and Taxation Code Section 231, if the qualifying owner meets all the provisions of Revenue and Taxation Code Section 214. C 1/26/78.

880.0525 Schools of Less Than Collegiate Grade. A nonprofit organization working directly with students in grades kindergarten to 12 in addition to working with teachers and other adults is a qualifying organization, assuming all requirements for exemption are met. C 3/3/78.

880.0560 Trade School. A trade school owned and operated by a local trade union for its members and/or potential members does not use its property exclusively for charitable purposes and activities. Further, the school does not qualify for the public schools exemption. It is a private institution, not a public school or public school district. C 12/8/87.

880.0565 Transportation Service. By contract to the local government, a claimant operates a discounted fare transportation program for senior citizens and disabled persons of the community. The operation of a fee-paid transportation service is a governmental, not charitable, activity. Even if the service was not provided solely by the government, the claimant is not entitled to an exemption because there is no charitable aspect to the claimant's role in providing the service as it is reimbursed for its costs, and the service is a commercial activity or equivalent thereof. C 3/6/2006. (2007–1).

880.0570 Unrelated Income. Pursuant to Revenue and Taxation Code Section 214.05, if an organization *whose property is otherwise eligible for exemption* receives taxable unrelated business income, i.e., income after expenses, from the use of a portion of that property, it will receive only a partial exemption for the property. Once it is determined that unrelated business taxable income is produced, exemption is limited to the proportion of the value of the property producing the unrelated business taxable income that the total gross income exempt from taxation produced by that portion of the property bears to the total gross income attributable to that portion of the property. C 6/20/89.

880.0580 Use of Property. Property owned and used by an owner or members for fraternal or lodge purposes is not used for exempt purposes and does not qualify for the exemption. C 9/18/78; C 10/16/78.

880.0581 Use of Property. The use by a qualifying organization of its generator to produce power for its own use is incidental and reasonably necessary for the accomplishment of its exempt purposes, and the sale of power to a public utility at times when the generator creates excess power for later repurchase at times the generator's production is insufficient does not result in loss of exemption. C 4/3/84.

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880.0582 Use of Property. The use of property by a membership organization may qualify for the exemption if the organization drafts its articles of incorporation and organizational documents to demonstrate that its primary purpose is charitable and that its activities will benefit the community at large rather than only its own membership, and if the organization applies for and receives charitable status with the Internal Revenue Service under Internal Revenue Code section 501(c)(3) and/or with the Franchise Tax Board under Revenue and Taxation Code section 23701d. However, if the membership organization's primary purpose is to raise funds and its meetings could be characterized as "fundraising meetings," an organization receiving the exemption for its property could jeopardize its exemption by permitting such meetings to take place on its property. C 10/2/2000. (2002-1).

880.0600(c) HOSPITAL PURPOSES

880.0625 Gift Shops. A gift shop operated by the owner hospital or by a hospital auxiliary on a nonprofit basis with net revenues, if any, expended for the direct benefit of the hospital may qualify for exemption. Both the owner hospital and operator, e.g., an auxiliary that is a separate organization, must meet the requirements for exemption. C 2/29/88.

880.0630 Laboratory. If a hospital operates a medical laboratory as a "reference laboratory" that accepts referrals from private physicians to assist patients not otherwise being served by the hospital, the laboratory will be ineligible for the exemption, even though any gain from fees may be used for general hospital purposes. C 3/19/97. (M99-1).

880.0640 Leased Property. While hospital property may be used by licensed physicians for the practice of their profession without losing exemption, the lease of a portion of a hospital property to a for-profit corporation owned, in part, by some of the hospital's physicians disqualifies that leased portion of the property. C 10/19/87.

880.0641 Leased Property. While specific statutory and regulatory provisions may allow a single member limited liability company (LLC) to disregard its separate existence for purposes of income tax filing, there is no authority for disregarding an LLC's separate entity status for purposes of ownership, operation, or use of property in determining eligibility for the welfare exemption under Revenue and Taxation Code section 214.

Accordingly, machinery and equipment purchased and owned by an LLC whose single member is a qualifying medical center and leased to the medical center will not be eligible for the exemption. However, machinery and equipment purchased and owned by a qualifying entity and leased to the medical center for use consistent with the "needs of hospital" provision of section 214.11 could be eligible for the exemption. C 3/1/99. (2000-1).

**WELFARE EXEMPTION
HOSPITAL PURPOSES (Contd.)**

- 880.0645 **Leased Property.** A nonprofit hospital corporation that has qualified for the exemption is not subject to general property taxes measured by the value of hospital equipment “leased” to it by a national banking corporation. OAG 11/3/78 (No. CV 78-58, Vol. 61, p. 472).
- 880.0660 **Needs of Hospitals.** Under Revenue and Taxation Code Section 214.11, as amended in 1983, while nonprofit (nongovernmental) hospitals must file and qualify for the exemption before the service organization can receive the exemption, filings by hospital districts or by state or federal hospitals are not required since they are nontaxable governmental entities. Service organizations

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claiming the exemption must include with their claims a list of all organizations they provide services to. Because property must be “used exclusively” for exempt purposes, the servicing of an organization that does not file and qualify as a hospital for the exemption, with the exceptions stated above, is sufficient cause to deny the exemption for the entire property of the service organization. LTA 3/16/84 (No. 84/35).

Note: Also, see *Rideout Hospital Foundation, Inc. v. Yuba County* (1992) 8 Cal.App.4th 214 as to whether a hospital may earn surplus revenue in excess of 10 percent during the immediate fiscal year and still qualify for exemption.

880.0670 Owner/Operator. Generally, all departments in a hospital are eligible for exemption if the hospital and property satisfy all exemption requirements. However, when a hospital contracts with an outside entity to run a department, that operator, whether denominated a lessee, operator, or otherwise, must also meet the requirements for exemption. The fact that the “use” agreement is advantageous to all parties is not determinative. C 2/10/88.

880.0690 Surplus Revenue. A non-profit hospital which earns surplus revenue in excess of ten percent during the preceding fiscal year may still qualify for the exemption. OAG 3/30/88 (No. 87-502, Vol. 71, p. 106).

Note: Also, see *Rideout Hospital Foundation, Inc. v. Yuba County* (1992) 8 Cal.App.4th 214 as to whether a hospital may earn surplus revenue in excess of 10 percent during the immediate fiscal year and still qualify for exemption.

880.0700(d) RELIGIOUS PURPOSES

880.0710 Bookstores. Bookstore properties of organizations selling religious materials in furtherance of their religious purposes and activities are eligible for exemption, but bookstore properties of organizations selling religious materials to produce revenues are not. C 12/17/79. (M99–1).

880.0780 Religious Activity—Ticket Distribution. A qualifying religious activity, e.g., a church Christmas program, is not impacted for purposes of eligibility for the exemption because tickets are distributed, whether sold or gifted, even if a for-profit organization handles the distribution. The cost of the distribution is in the same category as the cost of programs or advertising and is an acceptable expense so long as no one benefits from providing the distribution service through the payment of excessive charges or compensation or through the more advantageous pursuit of its business. C 9/8/88.

880.0790 Television Broadcasts. The licensing of recordings of religious performances to outside, for-profit companies for showing on pay-per-view television broadcasts does not impact the availability of the exemption for the property upon which the productions and recordings took place, provided the licensing is not a fundraising endeavor and the licensee’s compensation is not excessive and that the property is not used to benefit the licensee through the more advantageous pursuit of its business. C 6/15/94. (M99–1).

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